



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

August 28, 2012 Government Records Council Meeting

Jesse Wolosky
Complainant

Complaint No. 2010-188

v.

Township of Rockaway (Morris)
Custodian of Record

At the August 28, 2012 public meeting, the Government Records Council (“Council”) considered the August 21, 2012 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 August 17, 2012, 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 28th Day of August, 2012

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: August 30, 2012



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
August 28, 2012 Council Meeting**

**Jesse Wolosky¹
Complainant**

GRC Complaint No. 2010-188

v.

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

Records Relevant to Complaint:³

Copies of:

1. The Township's current OPRA request form.
2. Check registry data by check date from January 1, 2008 to present of the current/, main, or general fund exported in Word, Excel, ASCII from Edmunds, MSI or the current software used by the CFO, accountant or business administrator. (The data table should show all the checks, drafts, or other forms of disbursement approved or not approved by the governing body from January 1, 2008 to present.)

Request Made: June 29, 2010

Response Made: July 16, 2010

Custodian: Beverly Koval⁴

GRC Complaint Filed: July 26, 2010⁵

Background

June 28, 2011

At its November 29, 2011 public meeting, the Government Records Council ("Council") considered the November 22, 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:⁶

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

² Represented by Tiena M. Cofoni, Esq., of The Buzak Law Group, LLC (Montville, NJ).

³ Additional records were requested which are not at issue in this Denial of Access Complaint.

⁴ The previous custodian, Mary Cilurso, who responded to the relevant OPRA request and Denial of Access Complaint, is now retired. As of June 21, 2011, Beverly Koval has been appointed the acting Clerk.

⁵ The GRC received the Denial of Access Complaint on July 27, 2010.

⁶ Because the evidence of record indicated that the Custodian provided the requested records to the Complainant on or about August 9, 2010, the Council declined to order disclosure of such records.

1. Although the evidence of record indicates that the Township of Rockaway amended the Township's official OPRA request form as ordered, the Custodian failed to fully comply with the Council's June 28, 2011 Interim Order by providing the Council with the required certification of compliance within the five (5) business days prescribed in the Council's June 28, 2011 Interim Order.
2. In the matter before the Council, the original Custodian's response constituted a "deemed" denial, the Township's official OPRA request form contained inaccuracies constituting a denial of access and the current Custodian failed to provide timely certified confirmation of compliance with the Council's June 28, 2011 Interim Order. However, the Custodian provided certified confirmation of compliance with the Council's Order on August 4, 2011, certifying that the Township has adopted the GRC's Model OPRA request form as the Township's official OPRA request form. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
3. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), 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 and Mason. Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees. Based on the New Jersey Supreme Court's decision in New Jerseyans for a Death Penalty Moratorium v. NJ Department of Corrections, 185 N.J. 137, 156-158 (2005) and the Council's decisions in Wolosky v. Township of Sparta (Sussex), GRC Complaint Nos. 2008-219 and 2008-277, adjudicated concurrently herewith, an enhancement of the lodestar fee is not appropriate in this matter because the facts of this case do not rise to a level of "unusual circumstances ...justify[ing] an upward adjustment of the lodestar[;]" this matter was not one of significant public importance, was not an issue of first impression before the Council, and the risk of failure was not high because the issues herein involved matters of settled law.

December 1, 2011

Council's Interim Order distributed to the parties.

March 12, 2012

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

August 17, 2012

E-mail from Complainant’s Counsel to the Honorable Judge Tahesha L. Way with copy to the GRC. Counsel states that the parties have settled on their own regarding all outstanding issues in this matter and pursuant to that settlement, the Complainant withdraws his Denial of Access Complaint.

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 August 17, 2012, 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

August 21, 2012



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. 2010-188

v.

Township of Rockaway (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 failure to either grant access, deny access, seek clarification, or request an extension of time to fulfill the Complainant’s request for check registry data and the Township of Rockaway’s official OPRA request form within the statutorily mandated seven (7) business days constitutes a “deemed” denial pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).
2. The Township’s official OPRA request form is deficient because (a) the OPRA request form does not contain a specific directions and procedures for requesting a record, the time period within which the public agency is required by [OPRA], to make the record available, 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 or a space for the custodian to list reasons if a request is denied 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 Rockaway’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 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.
 - Providing the details of the circumstances in which police investigation records are disclosable under N.J.S.A. 47:1A-3.b. or altogether omitting reference to police records.



3. **The Custodian shall comply with Item No. 2 above within five (5) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4¹, to the Executive Director.**
4. 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.
5. 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. 2010-188

v.

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

Records Relevant to Complaint:³ Copies of:

1. A copy of the Township's current OPRA request form.
2. Check registry data by check date from January 1, 2008 to present of the current/, main, or general fund exported in Word, Excel, ASCII from Edmunds, MSI or the current software used by the CFO, accountant or business administrator. (The data table should show all the checks, drafts, or other forms of disbursement approved or not approved by the governing body from January 1, 2008 to present.)

Request Made: June 29, 2010

Response Made: July 16, 2010

Custodian: Mary Cilurso

GRC Complaint Filed: July 26, 2010⁴

Background

June 29, 2010

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.

July 16, 2010

Custodian's response to the OPRA request. The Custodian received the Complainant's OPRA request on July 12, 2010. The Custodian responds in writing to the Complainant's OPRA request on the fourth (4th) business day following receipt of such request. The Custodian stated that she will forward a copy of the OPRA request form when the Complainant informs her whether he wants to purchase a record which is not at

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

² Represented by Tiena M. Cofoni, Esq., of The Buzak Law Group, LLC (Montville, NJ).

³ Additional records were requested which are not at issue in this Denial of Access Complaint.

⁴ The GRC received the Denial of Access Complaint on July 27, 2010.

issue in this complaint. The Custodian states that the requested check registry data is in the electronic format produced by Edmunds financial software.

July 16, 2010

E-mail from the Complainant to the Custodian. The Complainant states that he is still waiting for the requested check registry data.

July 27, 2010

Denial of Access Complaint filed with the Government Records Council (“GRC”) with the following attachments:⁵

- Complainant’s OPRA request dated June 29, 2010
- Custodian’s response to the OPRA request dated July 16, 2010
- E-mail from the Complainant to the Custodian dated July 16, 2010⁶

Complainant’s Counsel asserts that the Township’s OPRA form contains misleading information regarding OPRA. Complainant’s Counsel states that in O’Shea v. Township 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. Counsel asserts that here, as in the O’Shea case, 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. Counsel maintains that in addition, the Township's OPRA form stated that "police investigation records" were not public records, ignoring the several exceptions to such exemption contained in N.J.S.A. 47:1A-3.b. Counsel asserts that based on the O’Shea decision, the GRC should order the Township to revise its OPRA form. See also 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 asserts that the Complainant requested financial data and the Township's OPRA request form. Counsel argues that the Custodian's failure to provide these documents constitutes a deemed denial pursuant to N.J.S.A. 47:1A-5.i. Counsel states that the GRC should find that his client is the prevailing party and award him reasonable attorney’s fees pursuant to N.J.S.A. 47:1A-11.

The Complainant does not agree to mediate this complaint.

August 2, 2010

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

- A copy of the Township’s OPRA request form

⁵ The Complainant’s Counsel made amendments to this Complaint on July 29, 2010 to correct typographical errors.

⁶ Additional documentation not relevant to the adjudication of this complaint was also attached.

- Check registry data by check date from January 1, 2008 to present of the current/main, or general fund exported in Word, Excel, ASCII from Edmunds, MSI or the current software used by the CFO, accountant or business administrator.

The Custodian states that she did not receive the Complainant's e-mail dated July 16, 2010 until the Complainant's attorney sent her a copy of what was sent to the GRC. The Custodian asserts that she is not aware of any approved closed session minutes responsive to the Complainant's request.

August 5, 2010

E-mail from the Complainant to the Custodian. The Complainant acknowledges receipt of the OPRA request form. The Complainant states that he cannot read the MDI format in which the check registries were sent and requests the check registries be sent to him as PDFs.

August 9, 2010

E-mail from the Custodian to the Complainant. The Custodian informs the Complainant that she is going to send converted MDI files individually so that the Complainant can read them. The Custodian also offers to provide the files in paper format if there is any further difficulty.

August 16, 2010

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

August 23, 2010

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated June 29, 2010
- Custodian's response to the OPRA request dated July 16, 2010
- E-mail from the Complainant to the Custodian dated July 16, 2010
- E-mail from the Custodian to the Complainant dated August 2, 2010
- E-mail from the Complainant to the Custodian dated August 5, 2010
- E-mail from the Custodian to the Complainant dated August 9, 2010

The Custodian certifies that the requested OPRA request form has no retention schedule when it is blank. The Custodian certifies that if a fee has been charged for records provided pursuant to an OPRA request, the OPRA request form must be retained for six (6) years, and if there is no fee, it must be retained for three (3) years.

The Custodian certifies that the requested check registry data from Edmunds for January 1, 2008 through June 30, 2010 is 306 pages and must be retained by the township for seven (7) years. The Custodian certifies that the check registry data was provided to the Complainant in its entirety on August 2, 2010 and again on August 9, 2010 as converted MDI files.

The Custodian certifies that she did not receive the Complainant's OPRA request until July 12, 2010. The Custodian certifies that she never received the Complainant's

July 16, 2010 e-mail. The Custodian certifies that on August 5, 2010, the Complainant informed her via e-mail that he was unable to open the check registry MDI files attached to the Custodian's August 2, 2010 e-mail. The Custodian certifies that she e-mailed the Complainant on August 9, 2010 explaining that she would attempt to send the documents in ten (10) separate e-mails with each including one (1) attachment. The Custodian certifies that she assumed the Complainant received the ten (10) separate e-mails sent on August 9, 2010 because she has not heard from the Complainant since that time.

The Custodian certifies that the OPRA request form and the check registry data have been provided to Complainant pursuant to his request.

The Custodian argues that it is unreasonable to expect that the OPRA request form will contain all the information regarding what is a public record and a list of all the exceptions thereto. The Custodian certifies that the information on the request form is a summary of the relevant portions of OPRA and refers a requestor to the appropriate legal citations. The Custodian certifies that her efforts to appease the Complainant demonstrate that she has not knowingly and willfully violated OPRA.

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 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 also provides that:

“[i]f the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor. The custodian shall sign and date the form and provide the requestor with a copy thereof ...” N.J.S.A. 47:1A-5.g.

OPRA further provides that:

“[u]nless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access ... or deny a request for access ... as soon as possible, but *not later than seven business days after receiving the request* ... In the event a custodian fails to respond within seven business days after receiving a request, *the failure to respond shall be deemed a denial of the request* ...” (Emphasis added.) N.J.S.A. 47:1A-5.i.

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

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

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

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5.i. As also prescribed under N.J.S.A. 47:1A-5.i., a custodian’s failure to respond within the required seven (7) business days results in a “deemed” denial. Further, a custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A.

47:1A-5.g.⁷ Thus, a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (October 2007).

In the matter before the Council, the Custodian certified that she did not receive the Complainant's June 29, 2010 OPRA request until July 12, 2010. The Custodian responded to the Complainant's request on July 16, 2010, the fourth (4th) business day request following the receipt of the request. However, the Custodian's response failed to address whether access to the Complainant's request for check registry data would be granted or denied. Instead, the Custodian merely responded that the requested check registry data is in an electronic format produced by Edmunds financial software.

Accordingly, the Custodian's failure to either grant access, deny access, seek clarification, or request an extension of time to fulfill the Complainant's request for check registry data and the Township of Rockaway's official OPRA request form within the statutorily mandated seven (7) business days constitutes a "deemed" denial 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).

Moreover, the evidence of record indicates that in her response to the OPRA request, the Custodian stated that she would forward a copy of the OPRA request form when the Complainant informed her whether he wants to purchase a record which is not at issue in this complaint. The Custodian's response to the request for a copy of the OPRA request form is not lawful under OPRA; OPRA contains no provision permitting a custodian to withhold disclosure of a record requested pending payment for a different, unrelated record. See N.J.S.A. 47:1A-1.1.

However, because the evidence of record indicates that the Custodian provided the records requested to the Complainant, although she did so after receipt of the Complainant's Denial of Access Complaint dated July 27, 2010, the Council declines to order disclosure of the requested records. The Council suggests that the Custodian consult the township attorney or some other designated person to determine the resolution of issues discussed in executive session minutes to identify those issues still requiring confidentiality and for which redactions are allowed.

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:

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.

“[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 that contains the essential elements set forth therein. 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’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 lacks some of the

elements required to be contained within an agency's official OPRA request form; specifically:

- The form states that "employee personnel files" are not public records, but does not state OPRA's exceptions to the general rule that personnel files are not public records.
- The form states that "police investigation records" are not public records, ignoring the several exceptions contained in N.J.S.A. 47:1A-3.b.

Therefore, the Council orders that the Township 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, Township 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.
- Providing the details of the circumstances in which police investigation records are disclosable under N.J.S.A. 47:1A-3.b. or altogether omitting reference to police records.

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 failure to either grant access, deny access, seek clarification, or request an extension of time to fulfill the Complainant's request for check registry data and the Township of Rockaway's official OPRA request form within the statutorily mandated seven (7) business days constitutes a "deemed" denial pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).

2. The Township's official OPRA request form is deficient because (a) the OPRA request form does not contain a specific directions and procedures for requesting a record, the time period within which the public agency is required by [OPRA], to make the record available, 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 or a space for the custodian to list reasons if a request is denied 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 Rockaway'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 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.
 - Providing the details of the circumstances in which police investigation records are disclosable under N.J.S.A. 47:1A-3.b. or altogether omitting reference to police records.
3. **The Custodian shall comply with Item No. 2 above within five (5) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4⁸, to the Executive Director.**
4. 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.
5. 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

⁸ "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."