



State of New Jersey
GOVERNMENT RECORDS COUNCIL
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

LORI GRIFA
Commissioner

FINAL DECISION

December 20, 2011 Government Records Council Meeting

Jorge Guerrero
Complainant

Complaint No. 2010-216

v.

County of Hudson
Custodian of Record

At the December 20, 2011 public meeting, the Government Records Council (“Council”) considered the December 13, 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 respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007). Moreover, because the Custodian failed to immediately grant to the requested salary and overtime information or request additional time to respond to the Complainant’s OPRA request, the Custodian has violated N.J.S.A. 47:1A-5.e. pursuant to Herron v. Township of Montclair, GRC Complaint No. 2006-178 (February 2007). *See also* Ghana v. New Jersey Department of Corrections, GRC Complaint No. 2008-154 (June 2009).
2. The Custodian initially responded stating that no record responsive to the Complainant’s OPRA request for a resume existed and subsequently certified in the Statement of Information that no record responsive existed. Additionally, there is no credible evidence in the record to refute the Custodian’s certification. Therefore, the Custodian did not unlawfully deny access to those records pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).
3. Even if records of any felony charges were contained within Mr. Spinello’s personnel file, such records are not disclosable under OPRA because felony charges are not specifically identified as personnel information subject to disclosure under OPRA. N.J.S.A. 47:1A-10. Thus, the Custodian lawfully denied access to the requested felony charges which may or may not exist within Mr. Spinello’s personnel file. N.J.S.A. 47:1A-6.



4. Although the Custodian's failure to respond in a timely manner to the Complainant's OPRA request resulted in a "deemed" denial and immediate access violation pursuant N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i. and N.J.S.A. 47:1A-5.e., the Custodian provided the Complainant with all records responsive to the request that existed and lawfully denied access to a copy of Mr. Spinello's resume pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005). Moreover, the Custodian lawfully denied access to any felony charges contained within Mr. Spinello's personnel file that may exist pursuant to N.J.S.A. 47:1A-10. 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.

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 20th Day of December, 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: December 22, 2011

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
December 20, 2011 Council Meeting**

**Jorge Guerrero¹
Complainant**

GRC Complaint No. 2010-216

v.

**County of Hudson²
Custodian of Records**

Records Relevant to Complaint: Information pertaining to the employment of Mr. Robert A. Spinello (“Mr. Spinello”) to include the following:

1. Date of hire.
2. Whether Mr. Spinello is permanent or provisional.
3. Salary as of August 2010.
4. Title as of August 2010.
5. Overtime hours earned for 2010.
6. Compensatory time earned for 2010.
7. Veteran status.
8. Copy of latest resume.
9. Any known felony charges.

Request Made: August 4, 2010

Response Made: September 2, 2010

Custodian: Neil Carroll, Jr.

GRC Complaint Filed: August 20, 2010³

Background

August 4, 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. The Complainant states that his preferred method of delivery is via U.S. mail.

August 20, 2010

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

- Complainant’s OPRA request dated August 4, 2010.
- Facsimile journal dated August 4, 2010.

¹ No legal representation listed on record.

² No legal representation listed on record.

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

The Complainant states that he submitted an OPRA request via facsimile to the County on August 4, 2010. The Complainant states that said request sought nine (9) separate items. The Complainant states that he further requested that the Custodian advise whether there are any costs related to the disclosure of the requested information. The Complainant states that he noted that his preferred method of delivery was via U.S. mail.

The Complainant states that as of August 18, 2010, the Complainant received no response, written or otherwise, from the Custodian.

The Complainant does not agree to mediate this complaint.

August 31, 2010

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

September 2, 2010

Custodian’s response to the OPRA request. The Custodian responds in writing to the Complainant’s OPRA request on the twentieth (20th) business day following receipt of such request.⁴ The Custodian states that he has received the following information from the Division of Personnel (“Personnel”) and Division of Payroll (“Payroll”) with respect to Mr. Spinello:

1. Dates of Hire/Title: March 17, 2008/Seasonal Assistant; September 15, 2008/Traffic Maintenance.
2. Status: Seasonal; permanent.
3. Salary as of August 2010: \$31,323.84 annually on salary.⁵
4. Overtime for 2010: \$5,156.77.
5. Compensatory time for 2010: None.
6. Veteran status: Non-veteran.
7. Resume: No resume on file.

The Custodian states that with regard to information of any known felony charges, OPRA provides that the following personnel information shall be disclosed:

“... an individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefor, and the amount and type of any pension received ... data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information ...” N.J.S.A. 47:1A-10.

The Custodian states that any records contained in an employee’s personnel file other than the information specifically identified pursuant to N.J.S.A. 47:1A-10 is not subject to disclosure. The Custodian states that based on the foregoing, the County is precluded

⁴ The Custodian certifies in the SOI that he received the Complainant’s OPRA request on August 5, 2010.

⁵ The Custodian did not identify a pay rate for the seasonal job.

from either acknowledging or denying the existence of any information relating to felony charges.

September 8, 2010

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated August 4, 2010.
- Letter from the Custodian to the Complainant dated September 2, 2010.

The Custodian certifies that his search for the requested records involved contacting Personnel and receiving the date of hire, status, salary as of August 2010, title as of August 2010 and veteran status. The Custodian certifies that Personnel further advised that there was no resume on file. The Custodian certifies that he also contacted Payroll and received overtime hours earned for 2010. The Custodian certifies that he then contacted the department where the employee worked and was advised that no compensatory time was earned as accumulation is not permitted.

The Custodian also certifies that no records responsive to the request were destroyed in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management.

The Custodian certifies that he received the Complainant's OPRA request on August 5, 2010. The Custodian certifies that upon receipt of OPRA requests, he usually refers them to the appropriate custodian or custodians. The Custodian certifies that here, the name of the Complainant was similar to that of another requestor who submitted a request for similar records. The Custodian certifies that because the latter request was fulfilled, the Custodian mistakenly assumed he had properly responded to the Complainant's OPRA request. The Custodian certifies that as a result of this error, the Complainant's OPRA request was not forwarded to the appropriate custodians.

The Custodian certifies that upon receipt of this complaint, the Custodian contacted the three (3) departments that maintain the requested information and asked those departments to provide said information. The Custodian certifies that he responded in writing on September 2, 2010 providing access to all of the requested information with the exception of Mr. Spinello's latest resume and information regarding any known felony charges.

The Custodian certifies that because he was informed by Personnel that no resume responsive existed, he advised the Complainant that no record responsive exists.

The Custodian further certifies that he denied access to the Complainant's request item seeking "felony charges" based on N.J.S.A. 47:1A-10, which sets forth specific information subject to disclosure from an individual's personnel file. The Custodian certifies that he further directed the Complainant to this provision for review.

The Custodian argues that the Complainant's OPRA request for "any known felony charges" does not fall within the category of personnel information subject to disclosure. The Custodian contends that based on the foregoing, the Complainant was

advised that any information contained in an employee file pertaining to felony charges would be exempt from disclosure under OPRA. The Custodian asserts that the Complainant was also advised that the County could neither acknowledge nor deny the existence of felony charges, as to do so would violate the spirit of OPRA which acknowledges a privacy interest in certain personnel information.

Analysis

Whether the Custodian timely responded to the Complainant's OPRA request?

OPRA provides that:

“[i]mmediate access ordinarily shall be granted to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information.” (Emphasis added.) N.J.S.A. 47:1A-5.e.

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.

Further, OPRA 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 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.⁶ 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.,

⁶ 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.

N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

In the instant complaint, the Custodian certified in the SOI that he received the Complainant's OPRA request on August 5, 2010. The Custodian further certified that he initially mistook this request for an earlier request from another requestor for personnel records and did not initially respond. The Custodian certified that upon receipt of this complaint, he realized his mistake and provided access to all records save the resume (which did not exist) and any known felony charges (which the Custodian argued are exempt from disclosure pursuant to N.J.S.A. 47:1A-10, if any existed) on the twentieth (20th) business day after receipt of the Complainant's OPRA request. Thus, the Custodian's failure to respond within the statutorily mandated time frame results in a "deemed" denial of access and a violation of N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.

Additionally, the responsive salary and overtime information is specifically classified under OPRA as "immediate access" records pursuant to N.J.S.A. 47:1A-5.e. In Herron v. Township of Montclair, GRC Complaint No. 2006-178 (February 2007), the GRC held that "immediate access language of OPRA (N.J.S.A. 47:1A-5.e.) suggest that the Custodian was still obligated to immediately notify the Complainant..." Inasmuch as OPRA requires a custodian to respond within a statutorily required time frame, when immediate access records are requested, a custodian must respond to the request for those records immediately, granting or denying access, requesting additional time to respond or requesting clarification of the request.

The evidence of record indicates that the Custodian did not conform to his statutory obligation under OPRA to grant immediate access to the requested salary and overtime information or request an extension of time to provide same immediately. Instead, the Custodian provided the requested information on the twentieth (20th) business day after receipt of the Complainant's OPRA request. Thus, the Custodian has violated N.J.S.A. 47:1A-5.e. because the Custodian had an obligation to respond to the Complainant's OPRA request for immediate access records immediately, even if said records are part of a larger request containing a combination of records requiring a response within seven (7) business days and immediate access records requiring an immediate response, as was the case here.

Therefore, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley supra. Moreover, because the Custodian failed to immediately grant to the requested salary and overtime information or request additional time to respond to the Complainant's OPRA request, the Custodian has violated N.J.S.A. 47:1A-5.e. pursuant to Herron, supra. See also Ghana v. New Jersey Department of Corrections, GRC Complaint No. 2008-154 (June 2009).

Whether the Custodian unlawfully denied access to the requested records?

OPRA provides that:

“...government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions...*” (Emphasis added.) N.J.S.A. 47:1A-1.

Additionally, OPRA defines a government record as:

“... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on file ... or that has been received* in the course of his or its official business ...” (Emphasis added.) N.J.S.A. 47:1A-1.1.

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

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

OPRA also provides that:

“[n]otwithstanding the provisions [OPRA] or any other law to the contrary, the *personnel or pension records* of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, *shall not be considered a government record* and shall not be made available for public access, *except that: an individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefor, and the amount and type of any pension received shall be a government record*; personnel or pension records of any individual shall be accessible when required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the United States, or when authorized by an individual in interest; and *data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment* or for receipt of a public pension, but not including any detailed medical or psychological information, shall be a government record.” (Emphasis added.) N.J.S.A. 47:1A-10.

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

In the instant complaint, the Complainant submitted an OPRA request for several types of information regarding an employee of the County:

1. Date of hire.
2. Whether Mr. Spinello is permanent or provisional.
3. Salary as of August 2010.
4. Title as of August 2010.
5. Overtime hours earned for 2010.
6. Compensatory time earned for 2010.
7. Veteran status.
8. Copy of latest resume.
9. Any known felony charges.

The Complainant subsequently filed this complaint after not receiving a response from the Custodian. Upon receipt of this complaint, the Custodian responded in writing on September 2, 2010 providing access to the information responsive to request Items No. 1 through No. 7 and advising the Complainant that no resume responsive to request Item No. 8 existed. The Custodian further advised the Complainant that OPRA did not obligate the Custodian to acknowledge whether any felony charges responsive to request Item No. 9 were included in the employee's personnel record or provide that information if it existed.

Some of the above information is specifically identified in OPRA as subject to disclosure pursuant to N.J.S.A. 47:1A-10. That information includes salary, title, overtime hours and compensatory time. *See Jackson v. Kean University*, GRC Complaint No. 2002-98 (February 2004)(holding that payroll information includes "the total amount of remuneration paid to each employee.") Additionally, although the date of hire is not specifically identified as subject to disclosure, this date helps determine the "length of service" of an employee which is subject to disclosure. Thus, it is reasonable that this information falls within the "length of service exception" and was properly provided to the Complainant. Moreover, OPRA does not specifically identify the condition of the employment (permanent or provisional) and veteran status as subject to disclosure; however, the Custodian disclosed same to the Complainant.

Thus, the two records for which the GRC must determine whether access was unlawfully denied are Mr. Spinello's resume and felony charges.

As to the Complainant's OPRA request for the resume, the Custodian responded stating that no record responsive existed. The Custodian further certified to same in the SOI and the Complainant did not dispute this fact. In Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the complainant sought a copy of a telephone bill from the custodian in an effort to obtain proof that a phone call was made to him by an official from the Department of Education. The custodian provided a certification in his submission to the GRC that certified that the requested record was nonexistent and the complainant submitted no evidence to refute the custodian's certification. The Council subsequently determined that "[t]he Custodian has certified that the requested record does not exist. Therefore, the requested record cannot (sic) be released and there was no unlawful denial of access."

Similarly, in this complaint, the Custodian initially responded stating that no record responsive to the Complainant's OPRA request for a resume existed and subsequently certified in the SOI that no record responsive existed. Additionally, there is no credible evidence in the record to refute the Custodian's certification. Therefore, the Custodian did not unlawfully deny access to those records pursuant to Pusterhofer, *supra*.

As to the Complainant's OPRA request for any known felony charges, the Custodian denied access to any records that may exist arguing that same are not personnel records subject to disclosure pursuant to N.J.S.A. 47:1A-10. The Custodian provided no evidence to indicate whether Mr. Spinello's personnel file actually contains any records pertaining to possible felony charges. The Custodian simply stated that acknowledging the existence (or non-existence) of felony charges in Mr. Spinello's personnel file would violate OPRA's interest in the confidentiality of certain personnel records.

As previously stated, OPRA provides that personnel records are "not be considered a government record and shall not be made available for public access." N.J.S.A. 47:1A-10. However, OPRA clearly identifies certain information that is subject to disclosure that may be contained within a personnel record. These exceptions do not include any possible felony or criminal charges that may be contained within a personnel file held by a public agency. Thus, OPRA implies that personnel records referencing felony charges are not subject to disclosure under OPRA.

Therefore, even if records of any felony charges were contained within Mr. Spinello's personnel file, such records are not disclosable under OPRA because felony charges are not specifically identified as personnel information subject to disclosure under OPRA. N.J.S.A. 47:1A-10. Thus, the Custodian lawfully denied access to the requested felony charges which may or may not exist within Mr. Spinello's personnel file. N.J.S.A. 47:1A-6.

Whether the Custodian's untimely response rises to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances?

OPRA states that:

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

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

"... If the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances,

the council may impose the penalties provided for in [OPRA]...” N.J.S.A. 47:1A-7.e.

Certain legal standards must be considered when making the determination of whether the Custodian’s actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian’s actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian’s actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian’s actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (Berg); the Custodian’s actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Although the Custodian’s failure to respond in a timely manner to the Complainant’s OPRA request resulted in a “deemed” denial and immediate access violation pursuant N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i. and N.J.S.A. 47:1A-5.e., the Custodian provided the Complainant with all records responsive to the request that existed and lawfully denied access to a copy of Mr. Spinello’s resume pursuant to Pusterhofer, *supra*. Moreover, the Custodian lawfully denied access to any felony charges contained within Mr. Spinello’s personnel file that may exist pursuant to N.J.S.A. 47:1A-10. 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.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007). Moreover, because the Custodian failed to immediately grant to the requested salary and overtime information or request additional time to respond to the Complainant’s OPRA request, the Custodian has violated N.J.S.A. 47:1A-5.e. pursuant to Herron v. Township of Montclair, GRC Complaint No. 2006-178 (February 2007). *See also* Ghana v. New Jersey Department of Corrections, GRC Complaint No. 2008-154 (June 2009).

2. The Custodian initially responded stating that no record responsive to the Complainant's OPRA request for a resume existed and subsequently certified in the Statement of Information that no record responsive existed. Additionally, there is no credible evidence in the record to refute the Custodian's certification. Therefore, the Custodian did not unlawfully deny access to those records pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).
3. Even if records of any felony charges were contained within Mr. Spinello's personnel file, such records are not disclosable under OPRA because felony charges are not specifically identified as personnel information subject to disclosure under OPRA. N.J.S.A. 47:1A-10. Thus, the Custodian lawfully denied access to the requested felony charges which may or may not exist within Mr. Spinello's personnel file. N.J.S.A. 47:1A-6.
4. Although the Custodian's failure to respond in a timely manner to the Complainant's OPRA request resulted in a "deemed" denial and immediate access violation pursuant N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i. and N.J.S.A. 47:1A-5.e., the Custodian provided the Complainant with all records responsive to the request that existed and lawfully denied access to a copy of Mr. Spinello's resume pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005). Moreover, the Custodian lawfully denied access to any felony charges contained within Mr. Spinello's personnel file that may exist pursuant to N.J.S.A. 47:1A-10. 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.

Prepared By: Frank F. Caruso
Senior Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

December 13, 2011