



State of New Jersey
GOVERNMENT RECORDS COUNCIL
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

LORI GRIFA
Commissioner

FINAL DECISION

May 24, 2011 Government Records Council Meeting

Christos J. Diktas
Complainant

Complaint No. 2010-85

v.

Ridgefield Park Village Zoning Board of Adjustment (Bergen)
Custodian of Record

At the May 24, 2011 public meeting, the Government Records Council (“Council”) considered the May 17, 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. Because Ms. Valentin failed to forward the Complainant’s April 9, 2010 OPRA request to the original Custodian or direct the Complainant to submit the OPRA request directly to the original Custodian within the statutorily mandated seven (7) business days required, Ms. Valentin has violated N.J.S.A. 47:1A-5.h. and N.J.S.A. 47:1A-5.i. pursuant to Kossup v. City of Newark Police Department, GRC Complaint no. 2006-174 (February 2007). See also Krrynda v. Barnegat Township School District (Ocean), GRC Complaint No. 2008-138 (February 2009).
2. Because the evidence of record indicates that the original Custodian fulfilled the instant OPRA request immediately upon being notified by the GRC of the filing of this complaint on May 3, 2010, and because the evidence of record indicates that the original Custodian was not previously aware of the instant OPRA request, the original Custodian did not unlawfully deny access to the Complainant’s OPRA request pursuant to Kossup v. City of Newark Police Department, GRC Complaint no. 2006-174 (February 2007).
3. Although Ms. Valentin violated N.J.S.A. 47:1A-5.h. by failing to forward the Complainant’s OPRA request to the original Custodian or return the request to the Complainant and direct him to the original Custodian, the original Custodian promptly provided access to the records requested upon being notified of the Complainant’s OPRA request on May 3, 2010 and the Complainant confirmed receipt of those records in a letter to the GRC dated June 16, 2010. Additionally, the evidence of record does not indicate that Ms. Valentin’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that Ms. Valentin’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 24th Day of May, 2011

Robin Berg Tabakin, Chair
Government Records Council

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

Charles A. Richman, Secretary
Government Records Council

Decision Distribution Date: June 2, 2011

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 24, 2011 Council Meeting**

Christos J. Diktas¹
Complainant

GRC Complaint No. 2010-85

v.

Ridgefield Park Village Zoning Board of Adjustment (Bergen)²
Custodian of Records

Records Relevant to Complaint: Copy on cassette tape of the audio recording of the Ridgefield Park Zoning Board of Adjustment (“Zoning Board”) proceedings conducted on June 16, 2009.

Request Made: April 9, 2010

Response Made: None.

Custodian: Deborah Fehre³

GRC Complaint Filed: April 28, 2010⁴

Background

April 9, 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.⁵

April 9, 2010

Letter from the Complainant to Mr. E. Carter Corrison, Jr., Esq., (“Mr. Corrison”) of Breslin and Breslin, P.A.⁶ The Complainant states that as a courtesy, he is advising Mr. Corrison that an OPRA request has been sent to Ms. Sol Valentin, Secretary for the Zoning Board (“Ms. Valentin”).

¹ No legal representation listed on record. However, the evidence of record indicates that the Complainant is an attorney representing a client.

² Represented by William Betesh, Esq., of Durkin & Boggia (Ridgefield Park, NJ).

³ In the Denial of Access Complaint, the Complainant identified Ms. Sol Valentin as the Custodian of Record. The original Custodian of Record was Ms. Barbara Pettit, who retired on July 1, 2010.

⁴ The GRC received the Denial of Access Complaint on said date.

⁵ The Complainant faxed his request to Ms. Sol Valentin, Secretary of the Zoning Board on April 9, 2010.

⁶ Mr. Corrison is serving as Special Legal Counsel for the Zoning Board in a lawsuit filed against the Zoning Board by the Complainant.

April 28, 2010

Denial of Access Complaint filed with the Government Records Council (“GRC”) with no attachments.

The Complainant states that he submitted an OPRA request to the Zoning Board on April 9, 2010. The Complainant states that he received no response from the Zoning Board.

The Complainant agrees to mediate this complaint.

May 3, 2010

Letter from Mr. Corrison to the Complainant attaching a transcript for the Zoning Board meeting held on June 16, 2009. Mr. Corrison states that attached is a copy of a transcript for the remainder of the Zoning Board’s meeting held on June 16, 2009.

May 25, 2010

E-mail from the GRC to the Complainant. The GRC states that it has reviewed the Complainant’s Denial of Access Complaint and found that a copy of the Complainant’s OPRA request was not included with the complaint. The GRC requests that the Complainant provide a copy of the relevant OPRA request by close of business on May 28, 2010.

May 25, 2010

Letter from the Complainant to the GRC with the following attachments:

- Complainant’s OPRA request dated April 9, 2010.
- Letter from the Complainant to Mr. Corrison dated April 9, 2010.⁷

The Complainant states that attached is the OPRA request relevant to this complaint. The Complainant states that also attached is correspondence submitted to Mr. Corrison.

May 27, 2010

Offer of Mediation sent to the Custodian.

June 7, 2010

E-mail from the GRC to the Custodian’s Counsel. The GRC states that it received the instant Denial of Access Complaint on April 28, 2010. The GRC states that in the Denial of Access Complaint, the Complainant expressed interest in mediating this complaint. The GRC states that it sent an Offer of Mediation to the Custodian on May 27, 2010 and has not received a response, which was due on June 1, 2010.

The GRC requests that Counsel advise whether the Zoning Board is interested in mediating the instant complaint by close of business on June 10, 2010.

⁷ The Complainant submitted additional correspondence that predates the submission of the OPRA request at issue in this complaint.
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June 10, 2010

The Custodian agrees to mediate this complaint.

June 16, 2010

Letter from the Complainant to the GRC. The Complainant states that the record at issue in this complaint has been provided by Ridgefield Park; therefore, mediation would be moot. The Complainant states that he wishes to proceed through the adjudication process because his client will not authorize the dismissal of this complaint.

June 30, 2010

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

July 7, 2010

E-mail from the Custodian’s Counsel to the GRC. Counsel states that he is in receipt of the GRC’s request for the SOI. Counsel states that he previously indicated that the GRC has identified the wrong person, Ms. Valentin, as the Custodian of Record. Counsel states that Ms. Barbara Pettit (“Ms. Pettit”) is in fact the Custodian of Record; however, Ms. Pettit retired effective June 30, 2010 and is currently out of town on vacation.

Counsel requests that the GRC advise whether Ms. Pettit, who was serving as Custodian of Record during the events involved in the instant complaint, should sign the SOI. Counsel further requests a thirty (30) day extension of time to submit the requested SOI.

July 8, 2010

E-mail from the GRC to the Custodian’s Counsel. The GRC states that based on the notes contained in the complaint file, Ms. Pettit previously advised the GRC that Ms. Valentin would be handling this complaint as the Custodian of Record because Ms. Valentin is responsible for all OPRA requests made to the Zoning Board. The GRC states that based on Counsel’s explanation in his July 7, 2010 e-mail, Ms. Pettit should sign the SOI.

The GRC states that in regard to Counsel’s request for an extension of time to submit the requested SOI, the GRC will generally grant one (1) extension of five (5) business days to submit same. The GRC states that while it recognizes the special set of circumstances within which Counsel is attempting to prepare the SOI, the GRC must deny an extension of thirty (30) days. The GRC states that it will grant Counsel an extension of time until July 21, 2010 to submit the requested SOI.

July 21, 2010

Custodian’s unsigned SOI⁸ with the following attachments:

- Complainant’s OPRA request dated April 9, 2010.

⁸ The original Custodian, Barbara Pettit, retired effective July 1, 2010. The Custodian’s SOI was submitted by the current Custodian, Deborah Fehre.

- Letter from Mr. Corrison to the Complainant dated May 3, 2010 attaching a transcript for the Zoning Board meeting held on June 16, 2009.
- Letter from the Complainant to the GRC dated June 16, 2010.

The Custodian asserts that the records at issue were provided to the Complainant on May 3, 2010, the same date that the Custodian was notified of the Complainant's OPRA request.

The Custodian asserts that the question regarding the last date upon which records that may have been 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 ("DARM") is not applicable.

The Custodian's Counsel submits a letter brief in support of the Custodian's position.⁹ Counsel notes that the Complainant did not submit his OPRA request to the Custodian but rather to Ms. Valentin. Counsel states that Ms. Valentin is an employee of Ridgefield Park but is neither the municipal clerk nor the Custodian of Record for Ridgefield Park. Counsel states that Ms. Valentin also does not work in the same department as the Custodian. Counsel further notes that the original Custodian made the responsive records available to the Complainant after the Complainant's OPRA request was brought to her attention as part of the complaint filed before the GRC.

Counsel states that this complaint stems from a variance application the Complainant filed before the Zoning Board on behalf of a client in March 2009. Counsel states that the Zoning Board discussed the Complainant's application at two (2) meetings and ultimately denied the variance. Counsel states that the Complainant subsequently filed an action in Superior Court which is still pending.

Counsel states that the Complainant subsequently submitted an OPRA request to Ms. Valentin via facsimile on April 12, 2010 and copied Mr. Corrison. Counsel notes that the OPRA request was neither addressed to nor copied to the Custodian. Counsel states that the Complainant subsequently filed the instant Denial of Access Complaint, again without addressing or forwarding same to the Custodian. Counsel states that the Custodian had no knowledge of the filing of this complaint until she was contacted by the GRC on May 3, 2010.

Counsel states that upon notification of this complaint, the Custodian searched for the requested records and directed Mr. Corrison to forward the records sought to the Complainant. Counsel states that these records were forwarded to the Complainant on May 3, 2010 and the Complainant acknowledged receipt of all records responsive in a letter to the GRC dated June 16, 2010.

Counsel states that OPRA provides that:

⁹ Counsel noted that because the Custodian retired on June 30, 2010, he was unable to produce her signature on the SOI.
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“Custodian of a government record’ or ‘custodian’ means in the case of a municipality, the municipal clerk and in the case of any other public agency, the officer officially designated by formal action of that agency's director or governing body, as the case may be.” N.J.S.A. 47:1A-1.1.

Counsel states that OPRA further provides that:

“Unless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access to a government record or deny a request for access to a government record as soon as possible, but not later than seven business days after receiving the request, provided that the record is currently available and not in storage or archived.” N.J.S.A. 47:1A-5.i.

Counsel states that the original Custodian served as municipal clerk at the time of the Complainant’s OPRA request and is the only person trained, authorized and empowered by statute to receive and respond to OPRA requests. Counsel states that conversely, Ms. Valentin is not trained, authorized or empowered to accept or handle OPRA requests. Counsel asserts that had the Complainant sent his OPRA request to the original Custodian or the Clerk’s Office, the original Custodian would have properly fulfilled said request. Counsel states that because the Complainant failed to address his request to the original Custodian, said request was not brought to the Custodian’s attention until May 3, 2010.

Counsel argues that based on the foregoing, the original Custodian responded in a timely manner by promptly responding immediately following notification of the Complainant’s Denial of Access Complaint by the GRC on May 3, 2010. Counsel asserts that the statutorily mandated time frame should have not begun until May 3, 2010, as opposed to April 9, 2010. Counsel argues that this position is consistent with the language of N.J.S.A. 47:1A-5.i. Counsel argues that to find that the statutorily mandated time frame began on April 9, 2010 would unfairly penalize the original Custodian for not responding to an OPRA request she was not aware of and would unfairly reward the Complainant for failing to properly submit his OPRA request with the appropriate personnel.

Counsel further argues that the Complainant also represents at least one (1) municipality in Bergen County and is in a better position to know the proper procedures for submitting OPRA requests to public agencies. Counsel argues that because all records responsive were provided on May 3, 2010, the Complainant’s continued pursuit of this complaint is in bad faith. Counsel states that in a letter to the GRC dated June 16, 2010, Complainant acknowledged receipt of the records at issue in this complaint; however, the Complainant noted his client will not authorize the dismissal of this complaint. Counsel asserts that the Complainant’s refusal to withdraw this complaint because his client has not authorized such an action seems disingenuous because he is named as the Complainant on this complaint and not the client, thus giving the Complainant the ability to withdraw said complaint if he so chooses.

March 31, 2011

E-mail from the GRC to the Custodian's Counsel. The GRC states that in the process of preparing this complaint for adjudication, the GRC discovered that the SOI was submitted without Ms. Pettit's signature. The GRC states that as previously discussed in an e-mail from the GRC to Counsel dated July 8, 2010, there was some confusion as to who was the Custodian of Record.

The GRC states that in order for the SOI to be valid, either Ms. Pettit or the current Custodian must review and sign the SOI signature page. The GRC also requests that Counsel provide the contact information for the current Custodian so that the GRC may update the file. The GRC requests that Counsel submit the requested information by April 4, 2011.

April 4, 2011

E-mail from the Custodian's Counsel to the GRC. Counsel requests an extension of time to submit the requested signature because the current Custodian is away until April 11, 2011. Counsel notes that depending upon whether the current Custodian agrees to sign the SOI, Counsel may need to reach out to Ms. Pettit, who currently resides out of state and may be difficult to contact.

April 4, 2011

E-mail from the GRC to the Custodian's Counsel. The GRC grants Counsel an extension of time until April 11, 2011 to submit the requested Custodian's signature.

The GRC notes that the submission of the Custodian's signature is integral to the adjudication of this complaint: without said signature, the SOI is invalid. The GRC advises that Ms. Pettit should sign the SOI, as was directed in an e-mail from the GRC to Counsel dated July 8, 2010. The GRC notes that it understands that the circumstances of this complaint make obtaining Ms. Pettit's signature difficult; however, the SOI still needs a signature from a custodian in order to be valid.

April 11, 2011

E-mail from the Custodian's Counsel to the GRC attaching a copy of the SOI submitted to the GRC on July 21, 2010 and executed by the current Custodian. Counsel states that the current Custodian was not employed by Ridgefield Park at the time of the Complainant's OPRA request and therefore does not have firsthand knowledge of the facts of the complaint. Counsel states that the current Custodian's signature is being provided because Ms. Pettit is retired and lives out of state.¹⁰

¹⁰ The Custodian's Counsel submitted additional correspondence arguing that the Complainant should not be entitled to prevailing party attorney's fees although he is an attorney representing a client. The GRC notes that the Complainant has not requested that the GRC determine whether the Complainant is a prevailing party; thus, the GRC will not make a determination on said issue in this complaint. Christos J. Diktas v. Ridgefield Park Village Zoning Board of Adjustment (Bergen), 2010-85 – Findings and Recommendations of the Executive Director

Analysis

Whether the original Custodian unlawfully denied access to the requested recording?

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:

“[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 ... If the custodian of a government record asserts that part of a particular record is exempt from public access pursuant to [OPRA], the custodian shall delete or excise from a copy of the record that portion which the custodian asserts is exempt from access and shall promptly permit access to the remainder of the record.” N.J.S.A. 47:1A-5.g.

OPRA provides that:

“[a]ny officer or employee of a public agency who *receives a request* for access to a government record *shall forward* the request to the custodian of the record or *direct* the requestor to the *custodian of the record*.” (Emphasis added.) N.J.S.A. 47:1A-5.h.

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.

The Complainant filed an OPRA request with Ms. Valentin on April 9, 2010 and subsequently filed a Denial of Access complaint on April 28, 2010 after not receiving a response to such request. In the SOI, the current Custodian asserted that the original Custodian did not receive the Complainant’s OPRA request until she was notified by the GRC of the filing of this complaint on May 3, 2010; the original Custodian asserted that all records responsive to the Complainant’s OPRA request were provided immediately upon notification of the OPRA request. The Complainant confirmed that all records at issue were disclosed to him in a letter to the GRC dated June 16, 2010.

Additionally, the Custodian’s Counsel argued in the SOI that the Complainant sent his OPRA request to Ms. Valentin, who is not the Custodian of Record for Ridgefield Park. Counsel argued that the original Custodian should not be found to have violated OPRA because she had no knowledge of the OPRA request until May 3, 2010 and immediately provided the Complainant access to all records responsive in accordance with N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. upon being advised of the filing of this complaint.

In Kossup v. City of Newark Police Department, GRC Complaint No. 2006-174 (February 2007), the complainant filed a Denial of Access Complaint after not receiving a response from the City of Newark (“City”). On October 4, 2006, Ms. Joyce Lanier (Ms. Lanier”), OPRA Manager, asserted that the custodian never received the request because it was forwarded directly to Lieutenant Caroline Clark of the City Police Department. Based on the facts presented, the Council held that:

“... pursuant to the fact that the Newark Police Department employee, Lt. Caroline Clark did not forward the Complainant’s request form or direct the Complainant to the proper records custodian, that employee (Lt. Caroline Clark) has violated N.J.S.A. 47:1A-5.h.”

The facts of this complaint are similar to those facts in Kossup, *supra*. Specifically, the Complainant submitted his OPRA request to Ms. Valentin, who had an obligation under OPRA to forward the request to the Custodian or return the request to the Complainant and direct him to the Custodian. However, Ms. Valentin failed to do so; thus, she violated N.J.S.A. 47:1A-5.h.

Therefore, because Ms. Valentin failed to forward the Complainant's April 9, 2010 OPRA request to the original Custodian or direct the Complainant to submit the OPRA request directly to the original Custodian within the statutorily mandated seven (7) business days required, Ms. Valentin has violated N.J.S.A. 47:1A-5.h. pursuant to Kossup, supra. See also Krywda v. Barnegat Township School District (Ocean), GRC Complaint No. 2008-138 (February 2009).

Additionally, the current Custodian asserts that the original Custodian did not receive and was unaware of the Complainant's OPRA request until she was notified by the GRC of the filing of this complaint. Thus, the original Custodian could not properly satisfy this OPRA request at the time of its submission because she had no knowledge of same. The GRC notes that the original Custodian fulfilled the OPRA request immediately after being made aware of such request on May 3, 2010.

The Council's holding in Kossup, supra, also addressed a fact pattern similar to that of the instant complaint, holding that:

"Also in Mourning v. Department of Corrections, GRC Complaint No. 2006-75 (August 2006), the Council found that pursuant to the fact that the Custodian certified that she did not receive the Complainant's OPRA request until January 20, 2006 and consequently responded in a timely manner on January 24, 2006, she is not in violation of N.J.S.A. 47:1A-5.i. or N.J.S.A. 47:1A-5.g.

In this case, pursuant to the fact that the OPRA Manager certified that neither she nor the Custodian received the Complainant's OPRA request until after the denial of access complaint was filed with the GRC, the Custodian did not unlawfully deny the Complainant's request." *Id.* at pg. 5-6.

Therefore, because the evidence of record indicates that the original Custodian fulfilled the instant OPRA request immediately upon being notified by the GRC of the filing of this complaint on May 3, 2010, and because the evidence of record indicates that the original Custodian was not previously aware of the instant OPRA request, the original Custodian did not unlawfully deny access to the Complainant's OPRA request pursuant to Kossup, supra.

Whether Ms. Valentin's failure to forward the Complainant's request to the original Custodian within the statutorily mandated time frame 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 Ms. Valentin violated N.J.S.A. 47:1A-5.h. by failing to forward the Complainant’s OPRA request to the original Custodian or return the request to the Complainant and direct him to the original Custodian, the original Custodian promptly provided access to the records requested upon being notified of the Complainant’s OPRA request on May 3, 2010 and the Complainant confirmed receipt of those records in a letter to the GRC dated June 16, 2010. Additionally, the evidence of record does not indicate that Ms. Valentin’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that Ms. Valentin’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. Because Ms. Valentin failed to forward the Complainant’s April 9, 2010 OPRA request to the original Custodian or direct the Complainant to submit the OPRA request directly to the original Custodian within the statutorily mandated seven (7) business days required, Ms. Valentin has violated N.J.S.A. 47:1A-5.h. and N.J.S.A. 47:1A-5.i. pursuant to Kossup v. City of Newark Police Department, GRC Complaint no. 2006-174 (February 2007). See also Krzywda v. Barnegat Township School District (Ocean), GRC Complaint No. 2008-138 (February 2009).

2. Because the evidence of record indicates that the original Custodian fulfilled the instant OPRA request immediately upon being notified by the GRC of the filing of this complaint on May 3, 2010, and because the evidence of record indicates that the original Custodian was not previously aware of the instant OPRA request, the original Custodian did not unlawfully deny access to the Complainant's OPRA request pursuant to Kossup v. City of Newark Police Department, GRC Complaint no. 2006-174 (February 2007).

3. Although Ms. Valentin violated N.J.S.A. 47:1A-5.h. by failing to forward the Complainant's OPRA request to the original Custodian or return the request to the Complainant and direct him to the original Custodian, the original Custodian promptly provided access to the records requested upon being notified of the Complainant's OPRA request on May 3, 2010 and the Complainant confirmed receipt of those records in a letter to the GRC dated June 16, 2010. Additionally, the evidence of record does not indicate that Ms. Valentin's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that Ms. Valentin'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

May 17, 2011