



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

February 21, 2017 Government Records Council Meeting

Isaac Fajerman
Complainant

Complaint No. 2015-247

v.

Franklin Township (Somerset)
Custodian of Record

At the February 21, 2017 public meeting, the Government Records Council (“Council”) considered the February 14, 2017 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. Because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided a specific deadline date when the requested records would be made available on two (2) occasions, the Custodian properly requested said extensions pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i). Further, those extensions were reasonable, based on the mitigating circumstances of this complaint. *See* Rivera v. City of Plainfield Police Dep’t (Union), GRC Complaint No. 2009-317 (May 2011); Criscione v. Town of Guttenberg (Hudson), GRC Complaint No. 2010-68 (November 2010); Werner v. NJ Civil Serv. Comm’n, GRC Complaint No. 2011-151 (December 2012). *See also* Rivera v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2008-112 (April 2010); O’Shea v. Borough of Hopatcong (Sussex), GRC Complaint No. 2009-223 (December 2010); Starkey v. NJ Dep’t of Transportation, GRC Complaint Nos. 2007-315, 2007-316 and 2007-317 (February 2009).
2. The Complainant’s cause of action was not ripe at the time of the filing of this Denial of Access Complaint: the Custodian had not denied access to any records responsive to the OPRA request. Specifically, the Custodian sought a second (2nd) proper extension until August 14, 2015; however, the Complainant filed this complaint eleven (11) business days prior to its expiration. Based on the foregoing, the instant complaint is materially defective and should therefore be dismissed. *See* N.J.S.A. 47:1A-5(i); Werner v. NJ Civil Serv. Comm’n, GRC Complaint No. 2011-151 (December 2012).



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 21st Day of February, 2017

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: February 23, 2017

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 21, 2017 Council Meeting**

**Isaac Fajerman¹
Complainant**

GRC Complaint No. 2015-247

v.

**Franklin Township (Somerset)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of:

1. E-mails between Justin Heyman, Joyce Miller, and Robert Vornlocker with Lightpath since January 1, 2014.
2. E-mails between Franklin Township (“Township”) employees discussing Lightpath or Data Network Solutions (“DNS”) since January 2014.³

Custodian of Record: Ann Marie McCarthy

Request Received by Custodian: July 6, 2015

Response Made by Custodian: July 14, 2015

GRC Complaint Received: July 30, 2015

Background⁴

Request and Response:

On July 6, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 14, 2015, the Custodian responded in writing, stating that additional time until July 28, 2015, would be necessary to respond to the Complainant’s OPRA request.

On July 17, 2015, the Complainant e-mailed the Custodian, stating that he would only allow for an extension until July 20, 2015 because “[a] two week delay [was] unreasonable.” The Complainant alleged that OPRA precedent provides that attorney review periods must not delay an agency’s response. The Complainant also alleged that OPRA did not allow for “an attorney [to adjust] the reply date to his own convenience.”

¹ No legal representation listed on record.

² Represented by Louis N. Rainone, Esq., of DeCotiis, FitzPatrick & Cole, LLP (Teaneck, NJ).

³ The Complainant requested additional records that are not at issue in this complaint.

⁴ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

On the same day, the Custodian responded stating that she sought the extension to search for, locate, and collect responsive records. The Custodian stated that she is in possession of a large volume of e-mails that require review by herself and Counsel. The Custodian noted that she could not e-mail the records to Counsel and needed to load them on a flash drive and mail it to him, which she did on that day. The Custodian stated that she would be in a position to respond by July 28, 2015, but would respond sooner and provide access should the review go quicker than expected.

On the same day, the Complainant e-mailed the Custodian, again contesting the two (2) week extension for Counsel's review. The Complainant again asserted that OPRA did not intend to allow for extensions based on an attorney's review of possibly responsive records. The Complainant also alleged that the e-mails were not inherently exempt from disclosure and should be disclosed. The Complainant reiterated that he would permit an extension only until July 20, 2015.

On the same day, the Custodian replied to the Complainant, advising that 795 e-mails were located and provided to her for review on July 16, 2015. The Custodian stated that she had to open each e-mail to determine whether it was responsive and needed to be reviewed by Counsel, especially if the e-mails were connected to anticipated or pending litigation. The Custodian averred that there was no way she could review every e-mail by July 20, 2015. The Custodian stated that she would disclose e-mails in batches, if necessary, and that she would only disclose those e-mails needing Counsel's review upon the completion of it. The Custodian stated that she would disclose the responsive records as quickly as she can process them.

On July 20, 2015, the Custodian responded to the Complainant, seeking another extension of time until August 14, 2015, due to the voluminous number of e-mails located. On July 24, 2015, the Complainant responded to the Custodian, stating that he would not allow for another extension beyond July 28, 2015 because she confirmed she was already in possession of the records and was simply failing to disclose them. The Complainant stated that he would "file a complaint and ask for penalties," if the Custodian failed to provide the responsive records by July 28, 2015.

On the same day, the Custodian's Counsel e-mailed the Complainant, advising that the overly broad nature of his OPRA request resulted in a substantial amount of responsive records. Counsel stated that the Township continued to make every attempt to produce records early within the extended time frame. On the same day, the Complainant e-mailed Counsel, again reiterating that OPRA does not allow for an extension of time to allow attorneys to review responsive records.

On July 29, 2015, the Complainant e-mailed the Custodian, advising that he was filing a Denial of Access Complaint.⁵ On July 30, 2015, the Complainant e-mailed the Custodian

⁵ The Complainant sent a second e-mail, alleging that the Custodian should recuse herself from the OPRA request because she made "many false statements in recommending an award of contract to Lightpath." The Complainant also noted that he would include the conflict of interest allegation in the Denial of Access Complaint. However, the GRC declines to adjudicate any possible conflict of interest issues, because the Legislature, when crafting OPRA,

advising that he attempted to call her over the last two (2) days but received no return call or was told by the Township Deputy Clerk she was busy. The Complainant alleged that the Custodian's avoidance tactics resulted in the Complainant's unwillingness to settle the complaint quickly.

Denial of Access Complaint:

On July 30, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that the Custodian unreasonably delayed the time frame to respond on the basis that Custodian's Counsel needed to review the responsive records. The Complainant asserted that he agreed to the first extension through July 28, 2015, as a courtesy. However, the Complainant argued that the second (2nd) extension through August 14, 2015 was unreasonable and "abusive."

The Complainant contended that OPRA does not allow for extensions predicated on attorney review: "any attorney review should occur after the release." The Complainant also argued that the Custodian delayed her response because some of the e-mails were connected to "anticipated" or "pending litigation." The Complainant argued that this reason is not one of OPRA exemptions and was thus unlawful.⁶

Supplemental Responses:

On August 13, 2015, the Custodian responded to the Complainant, stating that she was unable to send the responsive e-mails (totaling over 700) via e-mail because of a file size limitation; thus, she put them on a compact disc ("CD") that was available for pick up. The Custodian noted that e-mails were redacted based on three (3) exemptions:

- N.J.S.A. 47:1A-1.1: administrative or technical security information regarding computer, hardware, software and networks, the disclosure of which would jeopardize computer security.
- N.J.S.A. 47:1A-1.1: attorney-client privilege.
- N.J.S.A. 47:1A-1.1: "inter-agency or intra-agency advisory, consultative, or deliberative" ("ACD") material.

On the same day, the Complainant e-mailed the Custodian, stating that he intended to continue forward with his complaint. The Complainant alleged several accusations as to Custodian Counsel's truthfulness and stated that the GRC should conduct an *in camera* review of every redacted e-mail. The Complainant also stated that he would not accept a CD and required the Custodian to e-mail all records, either in one or several e-mails, if necessary. The Complainant noted that he would be willing to settle on receiving the CD via overnight or certified mail if the Custodian could definitively state that she was unable to e-mail the responsive records to him. The Complainant subsequently sent a second e-mail, seeking a more detailed explanation of ACD material redaction. The Complainant also argued that the ACD

did not empower the GRC to adjudicate allegations of conflict of interest. N.J.S.A. 47:1A-7(b); Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2012-288, *et seq.* (Interim Order dated March 25, 2014).

⁶ The Complainant also reasserted his conflict argument. As noted in FN 5, the GRC has no authority over such issues.

exemption no longer applied to any records disclosed in response to item No. 1 because the Lightpath matter concluded.

On August 14, 2015, the Complainant e-mailed the Custodian, confirming that her office verbally agreed to divide the responsive records and send them in multiple e-mails with assistance from the Township's Information Technology ("IT") Department. On the same day, Msiba Holliman sent twelve (12) e-mails to the Complainant attaching all responsive records. The Complainant subsequently responded to Ms. Holliman, stating that he only received 117 pages and asked if this was the complete set. On August 17, 2015, Ms. Holliman responded stating, "[y]es."

On the same day, the Complainant responded, stating that he was told 795 e-mails were responsive and the file would be too large to send in one e-mail; 117 pages did not contain 795 e-mails. The Complainant stated that he had e-mails proving that the Township failed to disclose multiple records. The Complainant also threatened to file a "supplemental complaint," arguing that the Township was withholding responsive records. On the same day, the Custodian e-mailed the Complainant, confirming there were over 700 e-mails totaling more than 1,000 pages sent in 12 separate e-mails. The Custodian also urged the Complainant to retrieve the CD to ensure he received all 12 e-mails.

On the same day, the Complainant e-mailed the Custodian, stating that he only received one (1) e-mail with one (1) .pdf containing 119 pages. The Custodian responded, stating that Ms. Holliman's e-mail account reflected 12 e-mails successfully sent to the Complainant on August 14, 2015, with no error messages. The Custodian offered to have the IT Department ensure delivery and also asked if the Complainant wished to receive the CD via overnight mail. The Complainant responded, stating that he would ask his office look at his server to see if any e-mails were blocked and get back to the Custodian.

Statement of Information:

On August 21, 2015, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on July 6, 2015. The Custodian certified that she forwarded the OPRA request to IT and sought an extension. The Custodian certified that, after determining that they would be unable to locate all responsive e-mails in a timely manner, she responded in writing on July 14, 2015, seeking an extension until July 28, 2015. The Custodian certified that on July 17, 2015, IT provided her a copy of 795 e-mails on CD. The Custodian affirmed that because of anticipated litigation with the Complainant regarding the non-award of a contract for internet services, she forwarded the CD to Custodian's Counsel for review. The Custodian certified that, notwithstanding the Complainant's objections, she ultimately sought two (2) extensions, through August 14, 2015.

The Custodian certified that she thought she could review the e-mails in batches but later found that, in order to perform an adequate review, each e-mail had to be opened and read. The Custodian certified that she separated the e-mails into three (3) categories: e-mails to be released, e-mails to be released with redactions, and e-mails to be denied. The Custodian certified that she redacted the middle category of e-mails and scanned them into one document. The Custodian

affirmed that on August 13, 2015, she offered the Complainant a CD, which he refused. The Custodian affirmed that she subsequently had Ms. Holliman send the responsive records over 13 e-mails on August 14, 2015.

The Custodian first argued that she lawfully sought extensions of time to respond to the Complainant's OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Rivera v. City of Plainfield Police Dep't (Union), GRC Complaint No. 2009-317 (May 2011); Criscione v. Town of Guttenberg (Hudson), GRC Complaint No. 2010-68 (November 2010); Werner v. NJ Civil Serv. Comm'n, GRC Complaint No. 2011-151 (December 2012). The Custodian contended that the Complainant never disputed that she timely responded on two (2) occasions and provided both times a date certain on which she would respond. The Custodian thus contended that her responses were clearly proper under OPRA.

The Custodian further argued that she properly redacted IP addresses and other "administrative or technical information regarding computer hardware, software and networks" from 42 e-mails (totaling 117 pages) because disclosure "would jeopardize computer security." N.J.S.A. 47:1A-1.1.

Finally, the Custodian asserted that the Complainant had several harassing and intimidating communications with the Township during the pendency of his OPRA request. The Custodian averred that the Complainant met every attempt to fulfill the OPRA request with hostility and accusations. The Custodian asserted that it was clear that the Complainant submitted his OPRA request with the intent to harass the Township. The Custodian also asserted that the Complainant's actions hindered the day-to-day operations in several Township offices, especially IT and the Clerk's Office. The Custodian averred that, notwithstanding the Complainant's actions, she made every attempt to fulfill the Complainant's OPRA request in a timely manner.⁷

Analysis

Timeliness

OPRA provides that a custodian may request an extension of time to respond to an OPRA request, but the custodian must provide a specific date by which he/she will respond. Should the custodian fail to respond by that specific date, "access shall be deemed denied." N.J.S.A. 47:1A-5(i).

In Rivera, GRC 2009-317, the custodian responded in writing to the complainant's request on the fourth (4th) business day by seeking an extension of time to respond and providing an anticipated date by which the requested records would be made available. The complainant did not agree to the custodian's request for an extension of time. The Council stated that:

The Council has further described the requirements for a proper request for an extension of time. Specifically, in Starkey v. NJ Dep't of Transportation, GRC

⁷ The Complainant and Custodian exchanged e-mails after the SOI, discussing the Complainant's alleged inability to access certain e-mails and the responsiveness of same.

Complaint Nos. 2007-315, 2007-316 and 2007-317 (February 2009), the Custodian provided the Complainant with a written response to his OPRA request on the second (2nd) business day following receipt of said request in which the Custodian requested an extension of time to respond to said request and provided the Complainant with an anticipated deadline date upon which the Custodian would respond to the request. The Council held that “because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated deadline date of when the requested records would be made available, the Custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5(g) [and] N.J.S.A. 47:1A-5(i).”

Id.

Further, in Criscione, GRC 2010-68, the Council held that the custodian did not unlawfully deny access to the requested records, stating in pertinent part that:

[B]ecause the Custodian provided a written response requesting an extension on the sixth (6th) business day following receipt of the Complainant’s OPRA request and providing a date certain on which to expect production of the records requested, and, notwithstanding the fact that the Complainant did not agree to the extension of time requested by the Custodian, the Custodian’s request for an extension of time [to a specific date] to respond to the Complainant’s OPRA request was made in writing within the statutorily mandated seven (7) business day response time.

Id.

Moreover, in Werner, GRC 2011-151, the Council again addressed whether the custodian lawfully sought an extension of time to respond to the complainant’s OPRA request. The Council concluded that because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated date by which the requested records would be made available, the Custodian properly requested the extension pursuant to OPRA. In rendering the decision, the Council cited as legal authority, GRC 2009-317; Criscione, GRC 2010-68; Rivera v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2008-112 (April 2010); O’Shea v. Borough of Hopatcong (Sussex), GRC Complaint No. 2009-223 (December 2010); and Starkey, GRC 2007-315, *et seq.*

Although extensions are rooted in well-settled case law, the Council need not unquestioningly find valid every request for an extension containing a clear deadline. In Ciccarone v. NJ Dep’t of Treasury, GRC Complaint No. 2013-280 (Interim Order, dated July 29, 2014), the Council found that the custodian could not lawfully exploit the process by repeatedly rolling over an extension once obtained. In reaching the conclusion that the continuous extensions resulted in a “deemed” denial of access, the Council looked to what is “reasonably necessary.”

In the instant matter, the Custodian sought two (2) extensions to fulfill the Complainant's OPRA request. The Custodian initially responded timely in writing on the sixth (6th) business day after receipt of the Complainant's OPRA request, obtaining an extension of nine (9) business days, or until July 28, 2015. Well prior to the expiration of the first extension, on July 20, 2015, the Custodian attempted to obtain another extension until August 14, 2015, or thirteen (13) business days. Each time the Complainant objected to any extensions and eventually filed the instant complaint on July 30, 2015, eleven (11) business days prior to the expiration of the second (2nd) extension.

The Complainant's OPRA request sought correspondence to/from three (3) individuals and the Township's IT vendor, Lightpath, for an estimated 18 month period. For this request, the Custodian extended the response time on two (2) occasions. Those extensions amounted to twenty-two (22) business days. As noted above, a requestor's approval is not required for a valid extension. In this instance, the Complainant repeatedly disagreed with the Custodian's proposed extensions and argued that OPRA does not contemplate extensions solely to allow an attorney to review records.⁸ It should also be noted that the Complainant advised the Custodian he would only allow for an extension until July 20, 2015, only to assert in the Denial of Access Complaint that he allowed the Custodian until July 28, 2015 "as a courtesy."

To determine if the extended time for a response is reasonable, the GRC must first consider the complexity of the request as measured by the number of items requested, the ease in identifying and retrieving requested records, and the nature and extent of any necessary redactions. The GRC must next consider the amount of time the custodian already had to respond to the request. Finally, the GRC must consider any extenuating circumstances that could hinder the custodian's ability to respond effectively to the request.⁹

The evidence of record indicates that, based on the nature of the OPRA request, the Custodian was working with IT and Custodian's Counsel to respond to the Complainant's OPRA request. The Custodian certified in the SOI that she received a CD containing 795 e-mails (totaling over 1,000 pages) on July 17, 2015. The Custodian, knowing that she could not efficiently review, redact (if necessary), and disclose 795 e-mails before July 28, 2015, sought her second (2nd) extension three (3) days later.

From the Custodian's receipt of the Complainant's OPRA requests, she sought nine (9) business days. The Custodian then sought an additional thirteen (13) business days after receiving over 1,000 pages of records to review for exempt information. Thus, the Custodian sought, in addition to the original seven (7) business days, twenty-two (22) business days for the OPRA request. Most important, the Custodian responded one (1) day prior to the expiration of the second time frame (and after the filing of this complaint), disclosing 749 of the e-mails (42 with redactions). The Custodian denied access to an additional 45 e-mails pursuant to N.J.S.A.

⁸ In Ciccarone, GRC 2013-280, the complainant allowed for a few extensions before denying the custodian any additional time. Although the complainant's acquiescence to extensions was a mitigating factor there, it was not the only factor on which the GRC relied to determine whether the requests for extension were reasonable.

⁹ "Extenuating circumstances" could include, but not necessarily be limited to, retrieval of records that are in storage or archived (especially if located at a remote storage facility), conversion of records to another medium to accommodate the requestor, emergency closure of the custodial agency, or the custodial agency's need to reallocate resources to a higher priority due to *force majeure*.

47:1A-1.1. The Custodian provided specific reasons for each extension and, notwithstanding the filing of this complaint, continued to maintain communication throughout the response process. Thus, the record sufficiently proves the extenuating circumstances warranting a delay in fulfilling the Complainant's OPRA request.

Based on the evidence of record, the GRC finds that extending the response time for the OPRA request to the extent demonstrated in the instant matter was proper and in line with OPRA's mandate to "promptly comply" with a records request and to grant or deny access "as soon as possible . . ." N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). In the instant matter, the GRC finds it reasonable for the Custodian to take twenty-nine (29) total business days to locate, retrieve, review, and redact 795 individual e-mails.

Accordingly, because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided a specific deadline date when the requested records would be made available on two (2) occasions, the Custodian properly requested said extensions pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i). Further, those extensions were reasonable, based on the mitigating circumstances of this complaint. *See Rivera*, GRC 2009-317; *Criscione*, GRC 2010-68; *Werner*, GRC 2011-151. *See also Rivera*, GRC 2008-112; *O'Shea*, GRC 2009-223; *Starkey*, GRC 2007-315, *et seq.*

Unripe Cause of Action

OPRA provides that "a custodian of a government record shall grant access to a government record or deny access to a government record as soon as possible, but not later than *seven business days after receiving the request . . .*" N.J.S.A. 47:1A-5(i) (emphasis added). OPRA further states that "[a] person who is denied access to a government record by the custodian of the record . . . may institute a proceeding to challenge the custodian's decision by filing . . . a complaint with the Government Records Council . . ." N.J.S.A. 47:1A-6.

In *Werner*, GRC 2011-151, after determining that the custodian's extension was proper, the Council addressed whether the complainant's request was ripe for adjudication. Looking to its prior decision in *Sallie v. NJ Dep't of Banking and Ins.*, GRC Complaint No. 2007-226 (April 2009), the Council held that "the instant complaint is materially defective and should therefore be dismissed." In reaching this conclusion, the Council reasoned that:

[T]he Custodian had not denied access . . . because the Custodian responded to the Complainant's OPRA request within the statutorily mandated seven (7) business days . . . requesting an additional seven (7) business days to respond to the OPRA request. Thus, the extended . . . time frame . . . had not expired at the time the Denial of Access Complaint was filed . . .

Id. at 9. *See also Inzelbuch v. Lakewood Bd. of Educ. (Ocean)*, GRC Complaint No. 2012-323 (February 2013).¹⁰

¹⁰ Prior to the Council's decision in *Ciccarone*, GRC 2013-280, the Council would adjudicate complaints similar to the current matter by administrative disposition.

The facts in the instant matter mirror those in Werner, GRC 2011-151. Specifically, the Custodian timely and properly sought two (2) extensions to locate, review, and redact 795 e-mails. However, the Complainant filed the instant complaint in the midst of the second extension: eleven (11) business days prior to its expiration. It is thus clear that the complaint was not ripe for adjudication at the time it was filed with the GRC.

Accordingly, the Complainant's cause of action was not ripe at the time of the filing of this Denial of Access Complaint: the Custodian had not denied access to any records responsive to the OPRA request. Specifically, the Custodian sought a second (2nd) proper extension until August 14, 2015; however, the Complainant filed this complaint eleven (11) business days prior to its expiration. Based on the foregoing, the instant complaint is materially defective and should therefore be dismissed. *See* N.J.S.A. 47:1A-5(i); Werner, GRC 2011-151.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided a specific deadline date when the requested records would be made available on two (2) occasions, the Custodian properly requested said extensions pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i). Further, those extensions were reasonable, based on the mitigating circumstances of this complaint. *See* Rivera v. City of Plainfield Police Dep't (Union), GRC Complaint No. 2009-317 (May 2011); Criscione v. Town of Guttenberg (Hudson), GRC Complaint No. 2010-68 (November 2010); Werner v. NJ Civil Serv. Comm'n, GRC Complaint No. 2011-151 (December 2012). *See also* Rivera v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2008-112 (April 2010); O'Shea v. Borough of Hopatcong (Sussex), GRC Complaint No. 2009-223 (December 2010); Starkey v. NJ Dep't of Transportation, GRC Complaint Nos. 2007-315, 2007-316 and 2007-317 (February 2009).
2. The Complainant's cause of action was not ripe at the time of the filing of this Denial of Access Complaint: the Custodian had not denied access to any records responsive to the OPRA request. Specifically, the Custodian sought a second (2nd) proper extension until August 14, 2015; however, the Complainant filed this complaint eleven (11) business days prior to its expiration. Based on the foregoing, the instant complaint is materially defective and should therefore be dismissed. *See* N.J.S.A. 47:1A-5(i); Werner v. NJ Civil Serv. Comm'n, GRC Complaint No. 2011-151 (December 2012).

Prepared By: Frank F. Caruso
Communications Specialist/Resource Manager

February 14, 2017