



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

November 15, 2016 Government Records Council Meeting

Harry B. Scheeler, Jr.
Complainant

v.

Burlington Township (Burlington)
Custodian of Record

Complaint No. 2015-93

At the November 15, 2016 public meeting, the Government Records Council (“Council”) considered the November 9, 2016 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that the Complainant, has failed to establish in his request for reconsideration of the Council’s September 29, 2016 Final Decision that either: 1) the Council's decision is based upon a “palpably incorrect or irrational basis;” or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Complainant failed to establish that the complaint should be reconsidered based on mistake and illegality. The Complainant has also failed to show that the Council acted arbitrarily, capriciously, or unreasonably. Specifically, the Complainant failed to demonstrate that the Council either neglected to consider OPRA’s complete legislative history or that the Council improperly considered extrinsic evidence in its analysis. Thus, the Complainant’s, request for reconsideration should be denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D’Atria v. D’Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

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 15th Day of November, 2016

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: November 17, 2016

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Reconsideration

**Supplemental Findings and Recommendations of the Executive Director
November 15, 2016 Council Meeting**

Harry B. Scheeler, Jr.¹
Complainant

GRC Complaint No. 2015-93

v.

Burlington Township (Burlington)²
Custodial Agency

Records Relevant to Complaint: Via E-Mail in PDF Format: “[A]ll legal bills received for the twp[.] solicitor in 2014.”

Custodian of Record: Anthony J. Carnivale, Jr.
Request Received by Custodian: March 30, 2015
Response Made by Custodian: March 30, 2015
GRC Complaint Received: April 6, 2015

Background

September 29, 2016 Council Meeting:

At its September 29, 2016 public meeting, the Council considered the April 19, 2016 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, found that:

The Custodian has met his burden of proof that he lawfully denied access to the Complainant’s OPRA [“Open Public Records Act”] request. N.J.S.A. 47:1A-6. The Complainant may not request records under OPRA because he is not a citizen of New Jersey. N.J.S.A. 47:1A-1.

Procedural History:

On October 4, 2016, the Council distributed its Final Decision to all parties. On October 14, 2016, the Complainant requested additional time to submit a request for reconsideration. On that same day, the GRC granted the Complainant’s request for an extension until October 26, 2016.

¹ The Complainant was not represented at the time he filed his Denial of Access Complaint but is now represented by C.J. Griffin, Esq. (Hackensack, NJ).

² Represented by David M. Serlin, Esq. (Moorestown, NJ).

On October 26, 2016, the Complainant filed a request for reconsideration of the Council's September 29, 2016 Final Decision based on mistake and illegality.

Analysis

Reconsideration

Pursuant to N.J.A.C. 5:105-2.10, parties may file a request for a reconsideration of any decision rendered by the Council within ten (10) business days following receipt of a Council decision. Requests must be in writing, delivered to the Council, and served on all parties. Parties must file any objection to the request for reconsideration within ten (10) business days following receipt of the request. The Council will provide all parties with written notification of its determination regarding the request for reconsideration. N.J.A.C. 5:105-2.10(a) – (e). In the matter before the Council, the Complainant timely filed the request for reconsideration of the Council's Order dated September 29, 2016 on October 26, 2016.

Applicable case law holds that:

“A party should not seek reconsideration merely based upon dissatisfaction with a decision.” D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a “palpably incorrect or irrational basis;” or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. *E.g.*, Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the court acted in an arbitrary, capricious or unreasonable manner. D'Atria, . . . 242 N.J. Super. at 401. “Although it is an overstatement to say that a decision is not arbitrary, capricious, or unreasonable whenever a court can review the reasons stated for the decision without a loud guffaw or involuntary gasp, it is not much of an overstatement.” Ibid.

[In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).]

Furthermore, “[t]he arbitrary, capricious or unreasonable standard is the least demanding form of judicial review.” D'Artria, 242 N.J. Super. at 401.

The Complainant did not introduce any new facts in his request for reconsideration. Rather, the Complainant argued that the Council based its final decision on a “palpably incorrect” legal basis. Cummings, 295 N.J. Super. at 384. The Complainant initially asserted that the Council failed to consider provisions within OPRA beyond N.J.S.A. 47:1A-1, which refer to a requestor as “any person” rather than “citizens.” The Complainant distinguished these sections (*e.g.*, N.J.S.A. 47:1A-5, et seq.) as “operational provisions” that confer “substantive rights” in

contrast with N.J.S.A. 47:1A-1, suggesting these latter provisions take precedence in ascertaining legislative intent.

However, the Complainant's implicit exclusion of N.J.S.A. 47:1A-1 as an "operational provision" within OPRA conflicts with the Supreme Court's holding in Burnett v. Cnty. of Bergen, 198 N.J. 408 (2009). There, the Court found that N.J.S.A. 47:1A-1 is "neither a preface nor a preamble . . . It appears after OPRA's enactment clause, making the provision part of the body of the law." Id. at 423. Thus, the Court concluded that N.J.S.A. 47:1A-1's privacy language should be equally balanced with N.J.S.A. 47:1A-5's directives on the disclosure of Social Security Numbers. Id. at 423-426. Similarly, the Council in the current matter gave equal weight to the Legislature's use of "citizens of this State" within N.J.S.A. 47:1A-1 as to the remaining provisions referencing requestors as "any person."

Alternatively, the Complainant asserted that even if OPRA's language were ambiguous as to who is eligible to access government records, the Council ignored the legislative history surrounding OPRA when it superseded New Jersey's Right to Know Law ("RTKL"). Specifically, the Complainant noted that, with the exception of N.J.S.A. 47:1A-1, the Legislature modified the statute to refer to requestors as "any person" rather than "citizen" or "citizens."

On the contrary, the Council did not ignore the changes made to N.J.S.A. 47:1A-1, *et seq.*, but instead took note of what remained unchanged when OPRA was enacted. Throughout OPRA's legislative history under Assembly Bill No. 1309 (209th Legislature) and Senate Bill No. 2003 (209th Legislature), N.J.S.A. 47:1A-1's pronouncement that records "shall be readily accessible . . . by the citizens of this State" was left untouched. As previously noted in the April 19, 2016 Findings and Recommendations, N.J.S.A. 1:1-4 provides that "[r]evised Statutes, not inconsistent with those of prior laws . . . shall be construed as a continuation of such prior laws." The Supreme Court has understood N.J.S.A. 47:1A-1's language to mean that New Jersey citizenship is required to have access RTKL. See South Jersey Pub. Co. v. N.J. Expressway Auth., 124 N.J. 478, 489 (1991).

The construction of a statute by the courts, supported by long acquiescence on the part of the Legislature, or by continued use of the same language or failure to amend the statute, is evidence that such construction is in accordance with the legislative intent. The persuasive effect of such legislative inaction is increased where the statute has been amended after a judicial construction without any change in the language so interpreted.

[Lemke v. Bailey, 41 N.J. 295, 301, 196 A.2d 523 (1963) (citations omitted).]

Additionally, the Complainant contended that the Council should not have considered the language of Senate Bill No. 351 (209th Legislature) ("S-351") when looking at extrinsic evidence to deduce statutory construction. The Complainant contended that looking to the language of bills of the same topic that did not pass committee has "no bearing on the matter of statutory construction," citing Rugamer v. Thompson, 130 N.J. Super. 181, 184 (Ch. Div. 1974). However, the courts have routinely looked to statements and discussions from members of the Legislature to ascertain intent, even when those discussions were over similar, but unenacted,

legislation. See Burnett, 198 N.J. at 426-427 (court referenced Senate hearing transcript discussing unenacted precursor legislation). See also Asbury Park Press v. Ocean County Prosecutor's Office, 374 N.J. Super. 312, 326 (Law Div. 2004).

Here, the Council did not look to S-351's statutory text in its analysis but rather the accompanying statement from Senators Kennedy and Kyrillos. They asserted that N.J.S.A. 47:1A-1 is interpreted to mean, "the right to information access [currently] exists for citizens alone." S-351 at 6. Indeed, N.J.S.A. 47:1A-1 did not change when OPRA was enacted, further evidencing that the Legislature did not intend to abrogate the citizenship requirement.

As the moving party, the Complainant was required to establish either of the necessary criteria set forth above: either 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. See Cummings, 295 N.J. Super. at 384. The Complainant failed to establish that the complaint should be reconsidered based on mistake and illegality. The Complainant has also failed to show that the Council acted arbitrarily, capriciously, or unreasonably. See D'Atria, 242 N.J. Super. at 401. Specifically, the Complainant failed to demonstrate that the Council either neglected to consider OPRA's complete legislative history or that the Council improperly considered extrinsic evidence in its analysis. Thus, the Complainant's request for reconsideration should be denied. Cummings, 295 N.J. Super. at 384; D'Atria, 242 N.J. Super. at 401; Comcast, 2003 N.J. PUC at 5-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant, has failed to establish in his request for reconsideration of the Council's September 29, 2016 Final Decision that either: 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Complainant failed to establish that the complaint should be reconsidered based on mistake and illegality. The Complainant has also failed to show that the Council acted arbitrarily, capriciously, or unreasonably. Specifically, the Complainant failed to demonstrate that the Council either neglected to consider OPRA's complete legislative history or that the Council improperly considered extrinsic evidence in its analysis. Thus, the Complainant's, request for reconsideration should be denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

Prepared By: Samuel A. Rosado, Esq.
Staff Attorney

November 9, 2016



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CHRIS CHRISTIE
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FINAL DECISION

September 29, 2016 Government Records Council Meeting

Harry B. Scheeler, Jr.
Complainant

Complaint No. 2015-93

v.

Burlington Township (Burlington)
Custodian of Record

At the September 29, 2016 public meeting, the Government Records Council (“Council”) considered the April 19, 2016 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 the Custodian has met his burden of proof that he lawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. The Complainant may not request records under OPRA because he is not a citizen of New Jersey. N.J.S.A. 47:1A-1.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 29th Day of September, 2016

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: October 4, 2016



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 27, 2016 Council Meeting**

**Harry B. Scheeler, Jr.¹
Complainant**

GRC Complaint No. 2015-93

v.

**Burlington Township (Burlington)²
Custodial Agency**

Records Relevant to Complaint: Via E-Mail in PDF Format: “[A]ll legal bills received for the twp[.] solicitor in 2014.”

Custodian of Record: Anthony J. Carnivale, Jr.
Request Received by Custodian: March 30, 2015
Response Made by Custodian: March 30, 2015
GRC Complaint Received: April 6, 2015

Background³

Request and Response:

On March 30, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. That same day, the Custodian responded in writing, denying the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-1 because the Complaint was not a citizen of the State of New Jersey.

Denial of Access Complaint:

On April 6, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant, a resident of the State of North Carolina, first referenced the GRC’s “OPRA Custodian’s handbook” [*sic*] which states that “[a]lthough OPRA specifically references ‘citizens of this State’ (N.J.S.A. 47:1A-1), the Attorney General’s Office advises that OPRA does not prohibit access to residents of other states.” N.J. Gov’t Records Council, Handbook for Records Custodians, (5th ed. Jan. 2011), at 7. The Complainant added further that neither the GRC nor the New Jersey courts has ruled that OPRA applies only to New Jersey citizens since the law’s inception.

¹ No representation listed on record.

² Represented by David M. Serlin, Esq. (Moorestown, NJ).

³ 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.

The Complainant requested that the GRC find that the Custodian unlawfully denied access to his OPRA request and issue an order for release of the requested records. Furthermore, the Complainant also requests that the GRC fine the Custodian for a knowing and willful violation of OPRA.

Statement of Information:

On April 17, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on March 30, 2015, and responded in writing that same day.

The Custodian maintained his position that the OPRA request was properly denied because the requestor is not a New Jersey citizen, pursuant to N.J.S.A. 47:1A-1.

Analysis

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 issue in this matter is whether N.J.S.A. 47:1A-1 limits OPRA access to citizens of New Jersey. Specifically, the GRC must decide whether the phrase “citizens of this State” in N.J.S.A. 47:1A-1 is interpreted to exclude out-of-state requestors from OPRA.

In S. Jersey Pub. Co. v. N.J. Expressway Auth., 124 N.J. 478, 489 (1991), the New Jersey Supreme Court held that a requestor “need only be a citizen of the State to obtain access to public records” under the Right to Know Law (“RTKL”). The Legislature left unchanged the relevant language in N.J.S.A. 47:1A-1 when it amended the RTKL in enacting OPRA. N.J.S.A. 1:1-4 provides that “[r]evised Statutes, not inconsistent with those of prior laws . . . shall be construed as a continuation of such prior laws.”

Notably, when Senators Kenny and Kyrilos introduced Senate Bill No. 351 (“S-351”) on January 11, 2000, the proposed Legislative findings and declarations struck the phrase “citizens of this State” and read, in pertinent part: “the Legislature finds and declares it to be the public policy of this State that public records shall be readily accessible for examination by members of the public.” That proposal was intentionally made to “[broaden] the scope of public policy regarding availability of public information to incorporate any member of the public and not just citizens. Currently, the right to information access exists for citizens alone.” NJ Assembly State Government Committee Statement on Assembly No. 1309, p. 2 (March 6, 2000); *see also* Assembly Judiciary Committee Statement to Assembly No. 1309, p. 1 (December 6, 2001). However, the Legislature did not adopt S-351. Rather, it was Senate Bill No. 866, which stated “the Legislature finds and declares it to be the public policy of this State that government records shall be readily accessible for inspection, copying, or examination by the citizens of this State . . .

”, that ultimately became OPRA. Moreover, in Burnett v. County of Bergen, et al., 198 N.J. 408, 423 (2009), the Court found that the Legislative findings and declarations of N.J.S.A. 47:1A-1 is part of the substantive body of law, rather than a non-operational preamble. Thus, the Legislature intended for government records to be accessible to citizens of the State.

In 2013, the Supreme Court of the United States upheld Virginia’s limitation of its Freedom of Information Act (“FOIA”) to citizens of Virginia. McBurney v. Young, 133 S.Ct. 1709, 1720 (2013). The Court granted certiorari in McBurney to address a conflict among the Circuit Courts as to whether state freedom of information laws that are available only to the citizens of the state violate the Privileges and Immunities Clause of the United States Constitution. *Id.* at 1714. Before the Fourth Circuit, in McBurney v. Young, 667 F.3d 454, 467-468 (4th Cir. 2012), upheld Virginia’s FOIA limitation to state citizens, the Third Circuit struck down a similar provision of Delaware’s FOIA, in Lee v. Minner, 458 F.3d 194, 198 (3d Cir. 2006), as a violation of the Privileges and Immunities Clause of the United States Constitution. The Supreme Court, noting that several other States, including New Jersey, have enacted freedom of information laws that are available only to their citizens, abrogated the Third Circuit’s decision in Lee and held that such laws do not violate the Privileges and Immunities Clause because “there is no constitutional right to obtain all the information provided by FOIA laws.” McBurney, *supra*, 133 S.Ct. at 1714, 1718-19 (2013).

Since the Court issued its opinion in McBurney, New Jersey courts have addressed whether OPRA permits requests from persons out-of-state. See Township of Wantage v. Thomas J. Caggiano, Docket No. SSX-C-21-15 (Ch. Div. Aug. 1, 2016) (holding out-of-state requesters have no standing to submit OPRA requests); Scheeler v. Ocean County Prosecutor’s Office, et al., Docket No. OCN-L-3295-15 (Law Div. Apr. 14, 2016) (holding OPRA permits out-of-state requests); Lawyers Committee For Civil Rights Under Law v. Atlantic City Board of Education, et al., Docket No. ATL-L-832-15 (Law Div. Feb. 19, 2016) (holding OPRA does not permit out-of-state requests), appeal pending A-2704-15; Scheeler v. City of Cape May, et al., Docket No. CPM-L-444-15 (Law Div. Feb. 19, 2016) (holding OPRA does not permit out-of-state requests), appeal pending A-2716-15; and Scheeler v. Atlantic County Municipal Joint Insurance Fund, et al., Docket No. BUR-L-990-15 (Law Div. Oct. 2, 2015) (tentative decision holding OPRA permits out-of-state requests), appeal pending A-2092-15.

A plain reading of N.J.S.A. 47:1A-1 demonstrates that OPRA is intended only for New Jersey citizens. The Supreme Court held that the precatory language in N.J.S.A. 47:1A-1 containing “citizens of this State” is part of the substantive body of the law and not a descriptive preamble. Burnett v. Cnty. of Bergen, et al., 198 N.J. 408, 423 (2009). Moreover, even if the phrase “citizens of this State” were ambiguous, the legislative history favors the conclusion that OPRA did not expand access to out-of-state requestors. Therefore, the GRC finds that OPRA was meant to apply only to the citizens of New Jersey.

Although the Complainant argues that the GRC has never held that OPRA applies only to New Jersey citizens, “an administrative agency has no obligation to follow a prior agency decision that incorrectly interprets a statute.” Moore v. Police Ret. Sys. Bd. of Trs., 382 N.J. Super. 347, 359 (App.Div. 2006), *rev’d on other grounds sub nom Patterson v. Bd. of Trustees*, 194 N.J. 29 (2008). Moreover, that the GRC expanded access on a consistent basis prior to this

complaint is irrelevant to ascertaining an accurate interpretation of the law. Evans v. Atlantic City Bd. of Educ., 404 N.J. Super. 87, 93 n. 1 (App.Div. 2008). “The scope of [a] statute cannot be expanded through a . . . past or present lax attitude toward the legislative mandate.” Id. The GRC is also now guided by the United States Supreme Court decision in McBurney.

The Complainant relies on the GRC’s training guides and materials for custodians to support his argument that the out-of-state requesters may avail themselves of OPRA. Specifically, he refers to the GRC’s handbook, which cites a 2002 Deputy Attorney General (“DAG”) memorandum to the GRC, interpreting N.J.S.A. 47:1A-1 as not prohibiting out-of-state requestors from access to OPRA. This argument is not persuasive because it fails to take into consideration that the DAG memorandum was issued in 2002, several years before McBurney and the other court decisions referenced above. Moreover, only “formal opinions” issued by the Attorney General have precedential value. Weiner v. Cnty. of Essex, 262 N.J. Super. 270, 281 n. 2 (Law Div.1992) (citing Preface to Attorney General's Opinions (1949 & 1950)). Whereas, informal Attorney General opinions and memorandum to agencies are akin to legal advice to a client, which can be accepted or rejected by the client. Bd. of Educ. of West Windsor-Plainsboro Reg’l Sch. Dist., Mercer Cnty. v. Bd. of Educ. of Twp. of Delran, Burlington Cnty., 361 N.J. Super. 488, 494 (App. Div. 2003).

Here, there is no evidence in the record demonstrating that the memorandum was approved and published as a formal opinion of the Attorney General. Thus, the GRC is not beholden to the DAG memorandum in perpetuity. “An initial agency interpretation is not instantly carved in stone. On the contrary, the agency . . . must consider varying interpretations and the wisdom of its policy on a continuing basis.” Glukowsky v. Equity One, Inc., 180 N.J. 49, 65-66 (2004) (citing Chevron U.S.A., Inc. v. Natural Res. Def. Council, 467 U.S. 837, 863-64 (1984)). In light of the relevant court decisions issued subsequent to the DAG’s 2002 memorandum, the GRC elects to reconsider its interpretation of N.J.S.A. 47:1A-1, as set forth above.

Therefore, the Custodian has met his burden of proof that he lawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. The Complainant may not request records under OPRA because he is not a citizen of New Jersey. N.J.S.A. 47:1A-1.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has met his burden of proof that he lawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. The Complainant may not request records under OPRA because he is not a citizen of New Jersey. N.J.S.A. 47:1A-1.

Prepared By: Samuel A. Rosado
Staff Attorney

April 19, 2016⁴

⁴ The Complaint was originally prepared for the Council’s adjudication at the April 26, 2016 meeting, but the Council tabled the matter at that time on the advice of legal counsel.