



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

January 31, 2019 Government Records Council Meeting

Mortimer Hetsberger
Complainant

Complaint No. 2017-94

v.

NJ Department of Corrections
Custodian of Record

At the January 31, 2019 public meeting, the Government Records Council (“Council”) considered the January 22, 2019 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 in order to prevent the unnecessary expenditure of administrative costs by the GRC in pursuing this matter, the complaint should be dismissed because the GRC cannot contact the Complainant and the Complainant has not made any attempt to contact the GRC regarding this complaint. Moreover, the GRC has attempted to obtain contact information for the Complainant through the Department of Corrections to no avail. See Swindell v. N.J. Dep’t of Env’tl. Prot. and Energy, Bureau of Coastal and Land Use Enforcement, OAL Docket No. ESA 5675-92 (Initial Decision 1993). See, also Taylor v. N.J. Dep’t of Corr., GRC Complaint No. 2010-319 (May 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 31st Day of January, 2019

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 5, 2019



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Reconsideration
**Supplemental Findings and Recommendations of the Council Staff
January 31, 2019 Council Meeting**

Mortimer Hetsberger¹
Complainant

GRC Complaint No. 2017-94

v.

New Jersey Department of Corrections²
Custodial Agency

Records Relevant to Complaint: Copies of “[n]ame, title and address of each member of the Religious Issues Committee. See N.J.A.C. 10A:17-6.6(2).”³

Custodian of Record: John Falvey

Request Received by Custodian: February 10, 2017

Responses Made by Custodian: February 17, 2017, February 23, 2017

GRC Complaint Received: May 1, 2017

Background

November 13, 2018 Council Meeting:

At its November 13, 2018 public meeting, the Government Records Council (“Council”) considered the November 7, 2018 Findings and Recommendations of the Council Staff 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 based on the inadequate evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to some or all of the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a determination of whether the Custodian lawfully denied access to some or all of the requested records, and if so to (a) order disclosure of said records, and (b) determine whether the Custodian and/or any other agency official knowingly and willfully violated OPRA and unreasonably denied access to the requested records under the totality of the circumstances and is therefore subject to a civil penalty pursuant to N.J.S.A. 47:1A-11.

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Tasha Bradt.

³ N.J.A.C. 10A:17-6.6(2) sets forth the composition and responsibilities of the Religious Issues Committee.

Procedural History:

On November 14, 2018, the Council distributed its November 13, 2018 Interim Order to all parties. On November 30, 2018, the Custodian's Counsel telephoned the GRC to ask if the Custodian could obtain an extension of time to file a request for reconsideration of the Council's November 13, 2018 Interim Order. Counsel acknowledged receiving the Interim Order on the November 14, 2018 distribution date. The GRC informed the Custodian's Council that the Custodian could not obtain an extension of time because the time for filing a request for reconsideration under N.J.A.C. 5:105-2.10(b) had already expired.

On December 4, 2018, the GRC received from the Custodian's Counsel a request for reconsideration of the Council's November 13, 2018 Interim Order dated November 30, 2018. Included with the request for reconsideration was a notice of motion to file as within time. In the notice of motion to file as within time, Counsel stated that ". . . due to the holidays, I inadvertently miscalculated the date the request for reconsideration was due . . ." Counsel stated that the reason for reconsideration was a mistake, and argued that it was applicable to this complaint because:

Counsel in the above-captioned matter inadvertently forgot to include the correspondence between the Complainant and the NJ Department of Corrections Custodian. These records will indicate to the Council that the Custodian created a record containing the titles that Complainant requested, and that Counsel produced the requested work addresses to him. Therefore, Complainant received all requested records and his complaint is moot.

The Custodian's Counsel attached to the request for reconsideration a certification from the Custodian, wherein he averred that on March 15, 2017, he mailed the Complainant a copy of a record containing the names and titles of the members of the Religious Issues Committee. The Custodian attached a copy of the March 15, 2017 correspondence to the certification. The Custodian also attached to the certification copies of two additional letters which were referenced in the Findings and Recommendations of the Council Staff but were not previously submitted to the GRC. These were (1) a letter dated March 19, 2017, from the Complainant to the Custodian; and (2) a letter dated March 27, 2017, from the Custodian to the Complainant.⁴

The Custodian's Counsel also provided a certification wherein she averred that on May 25, 2017, she provided the Complainant with the work addresses for the members of the Religious Issues Committee. Counsel attached a copy of the May 25, 2017 correspondence to the certification.

On December 7, 2018, the GRC received a return of a November 8, 2018 meeting notice that had been sent to the Complainant via first class mail. The notice had been mailed to his contact address of East Jersey State Prison, Lock Bag R, Rahway, NJ 07065. The correspondence was returned to the GRC marked, "RETURN TO SENDER - ADDRESSEE NOT AT EAST JERSEY STATE PRISON - UNABLE TO FORWARD." The Complainant did not provide the GRC with a current address or other means to contact him.

⁴ The, then purported, content of these two letters was addressed in the Findings and Recommendations of the Council Staff.

In an effort to locate the Complainant, on December 31, 2018, the GRC contacted the Department of Corrections seeking an address for the Complainant if he was discharged from the prison system, or an updated address if he was transferred to another facility within the system. The GRC also asked for his parole officer's contact information if there was no updated address available for the Complainant. On January 2, 2019, the Department of Corrections replied to the GRC's inquiry stating that on December 3, 2017, the Complainant maxed out on his sentence and that they had no further information available for him.

Analysis

Constructive Abandonment of Complaint

In this matter, the Complainant filed the Denial of Access Complaint while he was an inmate incarcerated at East Jersey State Prison, and provided that facility as his address of record on the complaint. On November 8, 2018, the GRC attempted to contact the Complainant regarding this complaint but the correspondence mailed to him was returned to the GRC on December 7, 2018, indicating the addressee was no longer at East Jersey State Prison. The GRC subsequently learned that the Complainant was released from incarceration on December 3, 2017; however, he failed to notify the GRC that the address he listed on the complaint was no longer a valid address for him. Further, the Complainant failed to provide the GRC with an updated mailing address, e-mail address, or other means by which to contact him. On December 31, 2018, the GRC contacted the Department of Corrections in an effort to obtain a current address for the Complainant, or failing that, to obtain contact information for his parole officer. The Department of Corrections replied, providing the Complainant's date of release from prison, and stating that they had no further information available for him.

In Swindell v. N.J. Dep't of Env'tl. Prot. and Energy, Bureau of Coastal and Land Use Enforcement, OAL Docket No. ESA 5675-92 (Initial Decision 1993), the petitioner appealed the assessment of a penalty pursuant to the Waterfront Development Statute. In response to said appeal, the Office of Administrative Law scheduled a mandatory early settlement conference at which the petitioner failed to appear. In the Administrative Law Judge's ("ALJ") Initial Decision, the ALJ found that:

After having given petitioner Swindell every opportunity to contact either the deputy attorney general or this tribunal to afford an explanation for his nonappearance and noncontact regarding this matter subsequent to the filing of his appeal, I **FIND** that petitioner Swindell has unilaterally disregarded his obligations in this matter even though it was he who initiated the process in the first instance. In the process, I **FIND** that petitioner Swindell has, for reasons unknown to this tribunal, caused the expenditure of unnecessary funds in order to prepare for a defense of his appeal, as well as the administrative costs generated at the Office of Administrative Law in order to process this matter for the benefit of the parties.

[Id.]

The New Jersey Department of Environmental Protection subsequently accepted the ALJ's Initial Decision on March 1, 1993.

Citing Swindell, the Council in Taylor v. N.J. Dep't of Corr., GRC Complaint No. 2010-319 (May 2012), dismissed a complaint filed by an inmate complainant who failed to make any attempt to contact the GRC regarding his complaint since he was released from custody approximately one year earlier.

Here, there is a constructive abandonment of this complaint by the Complainant because, although he has not been at his address of record for over a year, he failed to provide the GRC with any information concerning his whereabouts or other means by which to contact him, failed to contact the GRC regarding his complaint, and failed to otherwise express any interest in the further adjudication of the complaint.

Therefore, in order to prevent the unnecessary expenditure of administrative costs by the GRC in pursuing this matter, the complaint should be dismissed because the GRC cannot contact the Complainant and the Complainant has not made any attempt to contact the GRC regarding this complaint. Moreover, the GRC has attempted to obtain contact information for the Complainant through the Department of Corrections to no avail. See Swindell, supra. See also Taylor v. NJ Dep't of Corr., GRC Complaint No. 2010-319 (May 2012).

The GRC notes that Custodian's Counsel submitted an untimely request for reconsideration. N.J.A.C. 5:105-2.10. Notwithstanding, the GRC declines to address it because same was rendered moot by the abandonment of this complaint.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that in order to prevent the unnecessary expenditure of administrative costs by the GRC in pursuing this matter, the complaint should be dismissed because the GRC cannot contact the Complainant and the Complainant has not made any attempt to contact the GRC regarding this complaint. Moreover, the GRC has attempted to obtain contact information for the Complainant through the Department of Corrections to no avail. See Swindell v. N.J. Dep't of Env'tl. Prot. and Energy, Bureau of Coastal and Land Use Enforcement, OAL Docket No. ESA 5675-92 (Initial Decision 1993). See, also Taylor v. N.J. Dep't of Corr., GRC Complaint No. 2010-319 (May 2012).

Prepared By: John E. Stewart

January 22, 2019



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

INTERIM ORDER

November 13, 2018 Government Records Council Meeting

Mortimer Hetsberger
Complainant

Complaint No. 2017-94

v.

NJ Department of Corrections
Custodian of Record

At the November 13, 2018 public meeting, the Government Records Council (“Council”) considered the November 7, 2018 Findings and Recommendations of the Council Staff 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 based on the inadequate evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to some or all of the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a determination of whether the Custodian lawfully denied access to some or all of the requested records, and if so to (a) order disclosure of said records, and (b) determine whether the Custodian and/or any other agency official knowingly and willfully violated OPRA and unreasonably denied access to the requested records under the totality of the circumstances and is therefore subject to a civil penalty pursuant to N.J.S.A. 47:1A-11.

Interim Order Rendered by the
Government Records Council
On The 13th Day of November, 2018

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 14, 2018



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
November 13, 2018 Council Meeting**

**Mortimer Hetsberger ¹
Complainant**

GRC Complaint No. 2017-94

v.

**New Jersey Department of Corrections ²
Custodial Agency**

Records Relevant to Complaint: Copies of “[n]ame, title and address of each member of the Religious Issues Committee. See N.J.A.C. 10A:17-6.6(2).”³

Custodian of Record: John Falvey

Request Received by Custodian: February 10, 2017

Responses Made by Custodian: February 17, 2017, February 23, 2017

GRC Complaint Received: May 1, 2017

Background⁴

Request and Responses:

On February 10, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On February 17, 2017, the fifth (5th) business day following receipt of said request, the Custodian responded in writing requesting a ten (10) business day extension of time to respond to the request. Three (3) business days later, on February 23, 2017, the Custodian responded in writing informing the Complainant that he could disclose to the Complainant “a one page record consisting of name and title” of members of the committee; however, addresses were exempt from disclosure pursuant to N.J.S.A. 47:1A-10. The Custodian stated that he would provide the described records to the Complainant after copy fee charges were deducted from his inmate account.

Denial of Access Complaint:

On May 1, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant alleged that on March 19, 2017, he notified the

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Tasha Bradt.

³ N.J.A.C. 10A:17-6.6(2) sets forth the composition and responsibilities of the Religious Issues Committee.

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 Council Staff the submissions necessary and relevant for the adjudication of this complaint.

Custodian that the copying charges had been deducted from his inmate account on March 9, 2017. The Complainant alleged that he also clarified with the Custodian that he was seeking business addresses, not home addresses. The Complainant further stated that by letter dated March 27, 2017, the Custodian informed him that office addresses were also exempt from access.⁵

The Complainant asserted that (as of the date of the complaint) more than twenty-one (21) days had elapsed since payment of the copying charges, but that he did not receive the requested records. The Complainant further stated that the Custodian should be compelled to provide the office address for each member of the Religious Issues Committee. The Complainant asserted that only home addresses and not office addresses are exempt from disclosure under OPRA. The Complainant cited In re Cnty. of Morris v. Morris Council No. 6, 371 N.J. Super. 246 (App. Div. 2004) in support of his assertion.⁶

The Complainant stated that he wants the Council to find that the Custodian (1) failed to provide the requested records within the statutorily-mandated time frame; (2) erred in refusing to disclose office addresses for the Religious Issues Committee members; and (3) knowingly and willfully violated OPRA and is therefore subject to penalties pursuant to N.J.S.A. 47:1A-11.

Statement of Information:

After the Custodian's Counsel sought, and the GRC granted, two (2) extensions of time, the Custodian filed the Statement of Information ("SOI") on May 26, 2017. The GRC notes that the SOI was carelessly prepared.

The Custodian certified that he received the Complainant's OPRA request on February 10, 2017, and responded in writing on February 17, 2017. The document index, Item 9, consisted of a table containing twenty (20) rows; however, only one (1) row was completed. The Custodian in the document index Item 9(c) certified that no records were provided, but that "name information" was disclosed. In Item 9(e) of the document index, the Custodian certified that no records were denied, but that "address information" was denied as a personnel or pension record under "N.J.S.A." Although requested by the GRC, the Custodian did not list the number of pages for each record. For Item 12 of the SOI the Custodian stated, "See Attached." Although the SOI requires a custodian to provide all written documentation supporting the response, no such documentation was attached to the SOI.

A legal argument from the Custodian's Counsel was attached to the SOI as Item 12. After Counsel referenced the Custodian's February 17, 2017 and February 23, 2017 letters to the Complainant, she stated that the Custodian wrote to the Complainant on March 15, 2017, acknowledging receipt of the copying fee payment on March 9, 2017, as well as providing a copy of the requested records.

⁵ The Complainant stated that the March 19, 2017 and March 27, 2017 letters were attached to the complaint; however no such letters or copies of letters were attached.

⁶ This is a matter in which the court affirmed an order of the New Jersey Public Employee Relations Committee to provide a list of home addresses of all employees within the negotiations unit. It is fact sensitive.

The Custodian's Counsel stated that on March 19, 2017, the Complainant wrote to the Custodian to clarify that he did not want home addresses, but rather the office address and correctional facility to which each of the Religious Issues Committee members was assigned. Counsel stated that on March 27, 2017, the Custodian responded to the Complainant's letter denying his request. The Custodian's Counsel also stated that, although the "request for addresses sought information rather than an identifiable government record, the DOC has decided to provide the requested addresses in the interest of resolving this matter." The Custodian's Counsel stated that the Custodian provided the Complainant with the requested addresses on May 25, 2017.⁷

The Custodian's Counsel argued that the Custodian properly denied the work addresses for members of the Religious Issues Committee because the request sought information and failed to identify a specific government record. The Custodian's Counsel cited MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005), Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (October 2005) and NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007) in support of her argument. Counsel further argued that the GRC in Lopez v. N.J. Dep't of Corr., GRC Complaint No. 2008-250 (November 2009), held that because the complainant's request for the current work address and any alternate address for an ex-prison physician sought information rather than a specific government record, the request was not valid. Counsel argued that here, as in Lopez, the request for work addresses seeks information rather than a government record. Counsel concluded that the Custodian therefore acted properly in denying the request for addresses. Counsel argued in the alternative, that because the Custodian provided the requested addresses to the Complainant on May 25, 2017, the complaint is now moot and should be dismissed.

Finally, the Custodian's Counsel argued that the Custodian properly requested an extension of time to respond to the request. Counsel stated that the Council has previously determined that when a custodian responds to a request within the statutorily-mandated time period seeking an extension of time, and provides the requestor with an anticipated deadline date when the records will be made available, the custodian has complied with OPRA (citations omitted). Counsel stated that in the instant complaint, the Custodian requested an extension of time within the statutorily-mandated seven business days, and provided an anticipated deadline date when the records would be made available. For this reason, Counsel asserted that the Custodian properly requested an extension of time.

Additional Submissions:

By letter dated June 1, 2017, the Complainant informed the GRC that he received from the Custodian's Counsel the names and addresses of the members of the Religious Issues Committee. The Complainant stated that he did not receive the requested titles for the members. The Complainant also renewed his request for assessment of a \$1,000.00 penalty pursuant to N.J.S.A. 47:1A-11.

⁷ Because no written documentation was attached to the SOI, the GRC could not examine the Custodian's correspondence dated March 15, 2017, March 27, 2017 and May 25, 2017, to determine what precisely was disclosed to the Complainant.

By letter dated June 10, 2017, the Complainant stated that he received the Custodian's SOI on June 9, 2017, and that it contains a misstatement. The Complainant stated that Item 12 on page 2 of the SOI contains the following statement: "[o]n March 15, 2017, the DOC acknowledged receipt of Complainant's payment and provided a copy of the records he requested." The Complainant asserted that he can prove the statement is not correct because anytime a prisoner receives correspondence from the Custodian, the prisoner must sign a log book confirming receipt of the correspondence. The Complainant asserted that, "[n]ever did the DOC 'acknowledge[] receipt of [my] payment and provide[] a copy of the records [I] requested.' This is an outright lie!" The Complainant stated that Corrections Officer Grobowski can verify that the Complainant did not receive the correspondence of March 15, 2017, disclosing the requested records.

The Complainant stated that he did not receive any records from the Custodian until the Custodian's Counsel, in a letter dated May 25, 2017, provided him with the names and addresses of the members of the Religious Issues Committee and asked him to withdraw his complaint. The Complainant asked the GRC to order the Custodian to disclose to him the requested titles of the Religious Issues Committee members. The Complainant stated that N.J.S.A. 47:1A-10 provides that an individual's "title" is considered a government record.

The Complainant also asked the GRC to find that the Custodian failed to provide him with the requested records within seven days of receiving his payment for copying charges. The Complainant also again renewed his request that the GRC assess a \$1,000.00 penalty against the Custodian pursuant to N.J.S.A. 47:1A-11.

Analysis

Unlawful Denial of Access

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.

Here, both the Denial of Access Complaint and the Statement of Information make reference to the following correspondence:

- A letter dated March 15, 2017, from the Custodian to the Complainant.
- A letter dated March 19, 2017, from the Complainant to the Custodian.
- A letter dated March 27, 2017, from the Custodian to the Complainant.
- A letter dated May 25, 2017, from the Custodian to the Complainant.

These letters purportedly contain information essential to the adjudication of the complaint; however, neither the Complainant nor the Custodian attached this documentation to their respective submissions. And while there is some disagreement between the parties as to the content

of some of the correspondence, the Complainant denies ever receiving the letter dated March 15, 2017, and claims that he can offer proof to that effect.⁸

The Custodian in his February 23, 2017 response to the request stated that upon payment of copying charges he could disclose to the Complainant “a one page *record* consisting of name and title” of members of the Religious Issues Committee. The Custodian stated that he would not provide the requested addresses because they are exempt from disclosure pursuant to N.J.S.A. 47:1A-10 as personnel and pension *records*. Later, in the SOI, the Custodian certifies that no records were provided, but that “name information” was disclosed.

The Custodian’s Counsel in the SOI argued that the request for work addresses seeks information rather than a government record. Indeed, Counsel’s entire legal argument focused upon the requested addresses. Counsel did not speak to the other request items except for one sentence in which she stated, “[o]n March 15, 2017, the DOC acknowledged receipt of Complainant’s payment and provided a copy of the records he requested.” However, the referenced records were not identified by Counsel and the Complainant adamantly denied receiving the records on March 15, 2017, and denied ever receiving the requested title of each member of the Religious Issues Committee. Further, the SOI is silent with respect to disclosure of the requested titles, yet this request item was specifically identified by the Custodian in his February 23, 2017 response as a record he would disclose upon payment of a copying fee by the Complainant.

Given the above, it is unclear to the GRC if there are actual records responsive to the request items, or if the Custodian disclosed some or all of the requested information “in the interest of resolving this matter.” And if the former, was the record (a) an existing personnel record redacted to deny information exempt pursuant to N.J.S.A. 47:1A-10; (b) a record generated by the Custodian to only include information subject to disclosure pursuant to N.J.S.A. 47:1A-10; (c) separate records for each request item; or (d) some other format. If the latter, it is unclear to the GRC why the Custodian’s Counsel did not include all of the request items in Point I and II of her legal argument.

Therefore, based on the inadequate evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to some or all of the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a determination of whether the Custodian lawfully denied access to some or all of the requested records, and if so to (a) order disclosure of said records, and (b) determine whether the Custodian and/or any other agency official knowingly and willfully violated OPRA and unreasonably denied access to the requested records under the totality of the circumstances and is therefore subject to a civil penalty pursuant to N.J.S.A. 47:1A-11.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that based on the inadequate evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to some or all of the requested records. Therefore, this complaint should be referred

⁸ The existence of this particular letter is important because it purportedly speaks to the issues of timeliness and granting of access.

to the Office of Administrative Law for a determination of whether the Custodian lawfully denied access to some or all of the requested records, and if so to (a) order disclosure of said records, and (b) determine whether the Custodian and/or any other agency official knowingly and willfully violated OPRA and unreasonably denied access to the requested records under the totality of the circumstances and is therefore subject to a civil penalty pursuant to N.J.S.A. 47:1A-11.

Prepared By: John E. Stewart
Staff Attorney

November 7, 2017