

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, 2023 Government Records Council Meeting

Frederic E. Fatell
Complainant
v.
Borough of Maywood (Bergen)
Custodian of Record

Complaint No. 2021-230

At the January 31, 2023 public meeting, the Government Records Council ("Council") considered the January 24, 2023 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. No "deemed" denial of access occurred here because the Custodian timely responded in writing within the statutory time frame applicable to the instant OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
- 2. The Custodian's September 21, 2021 response was insufficient because she failed to address the Complainant's preferred method of delivery (pickup). Therefore, the Custodian has violated OPRA. N.J.S.A. 47:1A-5(g), Delbury v. Greystone Park Psychiatric Hosp. (Morris), GRC Complaint No. 2013-240 (Interim Order dated April 29, 2014).
- 3. The Complainant's request item Nos. 5, 10, 11, and 16 are invalid because they failed to seek an identifiable government record. See MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005), Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). Further, the Complainant's request item Nos. 2 through 4, 7, 13 through 15, and 17 sought information and not identifiable "government records." LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009). Finally, the Complainant's request item No. 9 is invalid because it asked a question. Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009). Thus, the Custodian lawfully denied access to these request items. N.J.S.A. 47:1A-6.
- 4. The Custodian has borne her burden of proof that she lawfully denied access to the Complainant's OPRA request item Nos. 1, 6, 8, and 12. Specifically, the Custodian certified in the SOI, and the record reflects, that no records responsive to these request items exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).



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 31<sup>st</sup> Day of January 2023

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 6, 2023** 

# STATE OF NEW JERSEY GOVERNMENT RECORDS COUNCIL

# Findings and Recommendations of the Executive Director January 31, 2023 Council Meeting

Frederic E. Fatell<sup>1</sup> Complainant GRC Complaint No. 2021-230

v.

# Borough of Maywood (Bergen)<sup>2</sup> Custodial Agency

## **Records Relevant to Complaint:** Copies of:

- 1. The "Legislation, Ordinance, or Document" authorizing trees to be planted on West Pleasant Avenue.
- 2. The date trees were planted, including the specific location, number, and types of trees, who planted them, and the labor cost.
- 3. Criteria for choosing the trees and location.
- 4. Maintenance schedule and "evidence" of employees trimming the trees from date of planting to present.
- 5. "Record" of the reasons trees are "touching" the Complainant' building, blocking his signage, and curtailing his use of the retractable awning on West Pleasant Avenue.
- 6. Studies of public health hazards from bird defecation on sidewalks, signage, and nest building in trees.
- 7. Date the trees were last trimmed and when they are next scheduled for trimming.
- 8. "Any ordinance" identifying setbacks for all foliage from building facades.
- 9. "Who made the decision" as to where the trees were planted?"
- 10. "The record of Roberta Stern being notified of this problem" and "her actions."
- 11. "The record of the present [Borough of Maplewood ("Borough")] Administrator addressing this ongoing problem of negligence and her facts and findings."
- 12. Shade Tree Commission ("Commission") minutes from February 22, 2021.
- 13. "[N]ame(s) of registered tree removal professionals as suggested by Mr. Eyerman."
- 14. "The reason for tree removal cited on May 21, 2021 meeting (sic) under 'action taken'."
- 15. "The meaning of 'replacement tree will need to be straight until roof line'."
- 16. "The record of what and who is on the 'trim watch list' per" the Commission at is meeting on May 24, 2021.
- 17. "Criteria for approval of trim and shape for all applicants of July 12, 2021 meeting."
- 18. Copies of all tree evaluations and pictures performed by the Commission, Department of Public Works ("DPW"), or "its agents."

<sup>&</sup>lt;sup>1</sup> No legal representation listed on record.

<sup>&</sup>lt;sup>2</sup> Represented by Brian Eyerman, Esq. of Dario, Albert, Metz & Eyerman LLC. (Hackensack, NJ).

Custodian of Record: Barbara L. Dispoto

Request Received by Custodian: September 10, 2021 Response Made by Custodian: September 10, 2021 GRC Complaint Received: September 29, 2021

# **Background**<sup>3</sup>

## Request and Response:

On September 10, 2021, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On the same day, the Custodian responded in writing via e-mail seeking clarification of item Nos. 10 (clarify "the problem"), 11 (clarify "the ongoing problem"), and 18 (provide a time frame). Later in the day, the Complainant provided clarification for each item. On September 21, 2021, the seventh (7<sup>th</sup>) business day after receipt of the OPRA request, the Custodian responded in writing stating that no records responsive to item Nos. 1, 2, 3, 5, 6, 8 through 13, 15 and 17 existed. The Custodian disclosed records in response to item Nos. 4 and 7, 14, 16, and 18.

## **Denial of Access Complaint:**

On September 29, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that the Custodian failed to respond to his OPRA request.

## **Supplemental Response**:

On September 29, 2021, the Custodian forwarded her response to the Complainant. On September 30, 2021, the Complainant e-mailed the Custodian contending that he never received her e-mail or a phone call from the Borough. The Complainant disputed the Custodian's responses that no records exist and questioned how trees could be planted on West Pleasant Avenue without any record of purchase and installation. The Complainant posed additional questions to the Custodian relating to cost and authorization for the tree plantings and noted that he would submit another OPRA request if required. The Complainant finally demanded that the Custodian only communicate with him via certified mail at his own personal cost and that he would no longer communicate with her via e-mail.

On the same day, the Complainant forwarded the response to the GRC advising that he received it that morning. The Complainant argued that he disagreed with the "no government record" response to substantiate tree plantings anywhere on West Pleasant Avenue; thus, an unlawful denial of access occurred.

<sup>&</sup>lt;sup>3</sup> 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.

#### Statement of Information:

On October 4, 2021, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on September 10, 2021. The Custodian certified that she sought and received clarification on the same day. The Custodian certified that her search included extensive reviews of records within the Borough's files and research to determine if ordinances, DPW records, or other Commission records existed. The Custodian certified that she responded in writing on September 21, 2021 disclosing records responsive to several items and denying the rest as no records existed.

The Custodian contended that she was not required to conduct research to respond to a request that failed to identify specific governments records. The Custodian argued that notwithstanding the forgoing, she "went beyond" in attempting to locate potentially responsive records and ultimately disclosed to the Complainant via e-mail 91 pages of records with minor redactions for unlisted telephone number. The Custodian thus argued that she did not violate OPRA because she timely responded, addressed each request item, and disclosed records through the Complainant's preferred method of delivery.

#### **Additional Submissions:**

On October 5, 2021, the Complainant responded to the Custodian's SOI. The Complainant first noted that his method of delivery was "pick-up", but he never received a phone call from the Borough advising him of when he could retrieve the responsive records. The Complainant further argued that he never received the Custodian's response until September 30, 2021. The Complainant argued that he "instructed" the Custodian not to e-mail him and she "disregarded [his] directives."

The Complainant further contended that the Custodian's responses "were just basically hearsay without any documentation or evidence" that any records existed. The Complainant argued that the Borough was being uncooperative by asserting that no records exist where "incriminating or responsive evidence may be found."

#### **Analysis**

#### **Timeliness**

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond within the required seven (7) business days results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g). Thus, a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the

<sup>&</sup>lt;sup>4</sup> A custodian's written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

In the matter before the Council, the Complainant submitted his OPRA request to the Borough on September 10, 2021. The Custodian responded via e-mail on September 21, 2021 disclosing records responsive to five (5) items and denying the remaining items because no records existed. In his Denial of Access Complaint, the Complainant argued that the Custodian failed to respond to his OPRA request. Upon receipt of the complaint, the Custodian forwarded her response to the Complainant and subsequently certified in the SOI that she responded in writing on September 21, 2021. In response to the SOI, the Complainant argued that he did not receive the e-mail until September 30, 2021.

In reviewing the evidence of record here, the GRC is persuaded that no "deemed" denial occurred here. Specifically, the Custodian has certified that she responded via e-mail on September 21, 2021 and provided supporting documentation to support her certification. Further, the GRC confirms that the e-mail address used was the same contained within the subject OPRA request form. Thus, evidence supports that a timely response was proffered here.

Therefore, no "deemed" denial of access occurred here because the Custodian timely responded in writing within the statutory time frame applicable to the instant OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).

# **Insufficient Response**

The GRC previously adjudicated complaints in which a custodian did not address the preferred method of delivery. In <u>Delbury v. Greystone Park Psychiatric Hosp. (Morris)</u>, GRC Complaint No. 2013-240 (Interim Order dated April 29, 2014), the complainant identified his preferred method of delivery as "electronic copies on compact disc or USB drive." The custodian timely responded but did not address the complainant's preferred method of delivery. The Council, relying on its past decision in <u>O'Shea v. Twp. of Fredon (Sussex)</u>, GRC Complaint Number 2007-251 (February 2008) (stating "[a]ccording to [the] language of <u>N.J.S.A.</u> 47:1A-5(g), the [c]ustodian was given two ways to comply and should have, therefore, responded acknowledging the [c]omplainant's preferences with a sufficient response for each"), held that the custodian's response was insufficient. <u>See also Paff v. Borough of Sussex (Sussex)</u>, GRC Complaint Number 2008-38 (July 2008) (holding that although the custodian timely responded granting access to the requested record, the custodian's response was insufficient because she failed to address the preferred method of delivery).

Here, the Complainant's OPRA request specifically identified "pickup" as the preferred method of delivery. The Custodian responded via e-mail on September 21, 2021 disclosing multiple records, and later argued in the SOI that she addressed the Complainant's preferred method of delivery. The Complainant subsequently disputed the Custodian's assertion and noted

<sup>&</sup>lt;sup>5</sup> Although the Council held that the custodian's responses was insufficient, it should be noted that the Council also found no unlawful denial of access where the custodian referred the complainant to the specific location on the internet where the records could be accessed. <u>Id.</u> at (<u>citing Rodriguez v. Kean Univ.</u>, GRC Complaint No. 2013-69 (March 2014).

that although he sought to pick the responsive records up from the Borough, the Custodian never offered that option.

The evidence of record supports that, like in <u>Delbury</u>, GRC 2013-240, the Custodian's response was insufficient. Specifically, and contrary to her SOI argument, the Custodian e-mailed the responsive records to the Complainant and never addressed the Complainant's actual preferred method of delivery in any way. The Council's decisions in <u>Delbury</u>, GRC 2013-240 is thus applicable here and the Custodian's response was insufficient.

Accordingly, the Custodian's September 21, 2021 response was insufficient because she failed to address the Complainant's preferred method of delivery (pickup). Therefore, the Custodian has violated OPRA. N.J.S.A. 47:1A-5(g), Delbury, GRC 2013-240.

#### **Validity of Request**

The New Jersey Appellate Division has held that:

While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records "readily accessible for inspection, copying, or examination." N.J.S.A. 47:1A-1.

[MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005) (emphasis added).]

The court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

[Id. at 549 (emphasis added).]

The court further held that "[u]nder OPRA, agencies are required to disclose only 'identifiable' government records not otherwise exempt... In short, OPRA does not countenance open-ended searches of an agency's files." <u>Id.</u> (emphasis added). <u>Bent v. Stafford Police Dep't,</u> 381 <u>N.J. Super.</u> 30, 37 (App. Div. 2005); <u>N.J. Builders Ass'n v. N.J. Council on Affordable Hous.</u>,

<sup>&</sup>lt;sup>6</sup> Affirmed on appeal regarding Bent v. Stafford Police Dep't, GRC Case No. 2004-78 (October 2004).

390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

The validity of an OPRA request typically falls into three (3) categories. The first is a request that is overly broad ("any and all," requests seeking "records" generically, *etc.*) and requires a custodian to conduct research. <u>MAG</u>, 375 <u>N.J. Super.</u> 534; <u>Donato v. Twp. of Union</u>, GRC Complaint No. 2005-182 (January 2007). The second is those requests seeking information or asking questions. <u>See *e.g.* Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders</u>, GRC Complaint No. 2011-168 (December 2012). The final category is a request that is either not on an official OPRA request form or does not invoke OPRA. <u>See *e.g.* Naples v. N.J. Motor Vehicle Comm'n</u>, GRC Complaint No. 2008-97 (December 2008).

Regarding generic requests for "records," the request at issue in MAG sought "all documents or records evidencing that the ABC sought, obtained or ordered revocation of a liquor license for the charge of selling alcoholic beverages to an intoxicated person in which such person, after leaving the licensed premises, was involved in a fatal auto accident" and "all documents or records evidencing that the ABC sought, obtained or ordered suspension of a liquor license exceeding 45 days for charges of lewd or immoral activity." <u>Id.</u> at 539-540. The court noted that plaintiffs failed to include additional identifiers such as a case name or docket number. See also <u>Steinhauer-Kula v. Twp. of Downe (Cumberland)</u>, GRC Complaint No. 2010-198 (March 2012) (holding that the complainant's request item No. 2 seeking "[p]roof of submission" was invalid); <u>Edwards v. Hous. Auth. of Plainfield (Union)</u>, GRC Complaint No. 2008-183 *et seq.* (Final Decision dated April 25, 2012) (accepting the Administrative Law Judge's finding that a newspaper article attached to a subject OPRA request that was related to the records sought did not cure the deficiencies present in the request) <u>Id.</u> at 12-13.

Moreover, in <u>Feiler-Jampel v. Somerset Cnty. Prosecutor's Office</u>, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008), the Council similarly held that a request seeking "[a]ny and all documents and evidence" relating to an investigation being conducted by the Somerset County Prosecutor's Office was invalid, reasoning that:

[B]ecause the records requested comprise an entire SCPO file, the request is overbroad and of the nature of a blanket request for a class of various documents rather than a request for specific government records. Because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian had no legal duty to research the SCPO files to locate records potentially responsive to the Complainant's request pursuant to the Superior Court's decisions in [MAG], [Bent] and the Council's decisions in Asarnow v. Department of Labor and Workforce Development, GRC Complaint No. 2006-24 (May 2006) and Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (February 2008).

[<u>Id. See also Schulz v. N.J. State Police</u>, GRC Complaint No. 2014-390 (Interim Order dated July 28, 2015) (holding that the portion of the request seeking "all documents" was overly broad and thus invalid).]

Additionally, in <u>Lagerkvist v. Office of the Governor</u>, 443 <u>N.J. Super.</u> 230, 237 (App. Div. 2015), the court held that plaintiff's request was invalid because it required research. In reaching this conclusion, the court reasoned that:

The custodian in this case would have had to make a preliminary determination as to which travel records correlated to the governor and to his senior officials, past and present, over a span of years. The custodian would then have had to attempt to single out those which were third-party funded events. Next, he would have had to collect all documents corresponding to those events and search to ensure he had accumulated everything, including both paper and electronic correspondence. OPRA does not convert a custodian into a researcher.

[<u>Id.</u> at 237.]

Further, in <u>LaMantia v. Jamesburg Pub. Library (Middlesex)</u>, GRC Complaint No. 2008-140 (February 2009), the complainant requested the number of Jamesburg residents that hold library cards. The GRC deemed that the complainant's request was a request for information, holding that ". . . because request Item No. 2 of the Complainant's June 25, 2008 OPRA request seeks information rather than an identifiable government record, the request is invalid pursuant to [MAG] . . ." <u>Id.</u> at 6. <u>See also Ohlson v. Twp. of Edison (Middlesex)</u>, GRC Complaint No. 2007-233 (August 2009). Additionally, in <u>Watt v. Borough of North Plainfield (Somerset)</u>, GRC Complaint No. 2007-246 (September 2009), the Council held that the complainant's September 13, 2007, request seeking answers to five (5) questions regarding a property named the Villa Maria was invalid.

In the matter before the Council, the Complainant submitted an 18 (eighteen) item OPRA request, thirteen (13) of which sought generic records, pieces of information (such as names and reasons), and asked questions. The request items seeking general "record[s]" containing "reason[s]," proof of notification to Ms. Stern, actions taken by the Administrator, and potential "trim watch list" parties were item Nos. 5, 10, 11, and 16. The request items that sought information regarding planting and maintenance of trees, criteria, names, "reason[s]," and "meaning[s]" were item Nos. 2 through 4, 7, 13 through 15, and 17. Finally, the request item 9 specifically questioned who approved tree planting placement.

On their face, each of these requests would require research of the full universe of the Borough's files to locate responsive records and/or syphon information; the Custodian was not required to perform research and not required to respond to requests seeking generic records, information or questions not otherwise identifying a specific "government record" under OPRA. Such a finding is consistent with all prevailing case law, including MAG, 375 N.J. Super. at 546, Feiler-Jampel, GRC 2007-190, LaMantia, GRC 2008-140, and Watt, GRC 2007-246. The GRC notes that the Custodian did disclose records she purported to be responsive to item Nos. 4, 14, and 16. However, it is clear that the Custodian needed to conduct research in order to produce those records.

Accordingly, the Complainant's request item Nos. 5, 10, 11, and 16 are invalid because they failed to seek an identifiable government record. See MAG, 375 N.J. Super. at 546; Feiler-

<u>Jampel</u>, GRC 2007-190. Further, the Complainant's request item Nos. 2 through 4, 7, 13 through 15, and 17 sought information and not identifiable "government records." <u>LaMantia</u>, GRC 2008-140. Finally, the Complainant's request item No. 9 is invalid because it asked a question. <u>Watt</u>, GRC 2007-246. Thus, the Custodian lawfully denied access to these request items. <u>N.J.S.A.</u> 47:1A-6.

#### **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.

Initially, the GRC notes that it will not address the Custodian's disclosure in relation to OPRA request item No. 18 because the Complainant did not raise it as an issue. The GRC thus addresses the remaining OPRA request item Nos. 1, 8, and 12 that were not addressed above.

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005). Here, the Complainant's OPRA request item Nos. 1, 6, 8, and 12 sought ordinances and minutes; the Custodian responded to each item stating that no records existed. Following the filing of this complaint, the Custodian certified in the SOI that no records existed and included an explanation of her search and/or the reasons specific records did not exist. In response to the SOI, the Complainant argued that the Custodian responses were "uncooperative" and an attempt to hide records. However, the Complainant provided no evidence to refute the Custodian's SOI certifications. Thus, a review of evidence of record supports that the Custodian lawfully denied access to OPRA request item Nos. 1, 6, 8, and 12 on the basis that no records existed. Based on the forgoing, a conclusion in line with <u>Pusterhofer</u> is appropriate here.

Accordingly, the Custodian has borne her burden of proof that she lawfully denied access to the Complainant's OPRA request item Nos. 1, 6, 8, and 12. Specifically, the Custodian certified in the SOI, and the record reflects, that no records responsive to these request items exist. <u>N.J.S.A.</u> 47:1A-6; see Pusterhofer, GRC 2005-49.

#### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

- 1. No "deemed" denial of access occurred here because the Custodian timely responded in writing within the statutory time frame applicable to the instant OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
- 2. The Custodian's September 21, 2021 response was insufficient because she failed to address the Complainant's preferred method of delivery (pickup). Therefore, the Custodian has violated OPRA. N.J.S.A. 47:1A-5(g), <u>Delbury v. Greystone Park</u>

<u>Psychiatric Hosp. (Morris)</u>, GRC Complaint No. 2013-240 (Interim Order dated April 29, 2014).

- 3. The Complainant's request item Nos. 5, 10, 11, and 16 are invalid because they failed to seek an identifiable government record. See MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005), Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). Further, the Complainant's request item Nos. 2 through 4, 7, 13 through 15, and 17 sought information and not identifiable "government records." LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009). Finally, the Complainant's request item No. 9 is invalid because it asked a question. Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009). Thus, the Custodian lawfully denied access to these request items. N.J.S.A. 47:1A-6.
- 4. The Custodian has borne her burden of proof that she lawfully denied access to the Complainant's OPRA request item Nos. 1, 6, 8, and 12. Specifically, the Custodian certified in the SOI, and the record reflects, that no records responsive to these request items exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

Prepared By: Frank F. Caruso Executive Director

January 24, 2023