



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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ACTING COMMISSIONER LUCILLE DAVY
ROBIN BERG TABAKIN
DAVID FLEISHER
CATHERINE STARGHILL Esq., Executive Director

FINAL DECISION

February 28, 2007 Government Records Council Meeting

Michael Deluca
Complainant

Complaint No. 2006-126

v.

Town of Guttenberg
Custodian of Record

At the February 28, 2007 public meeting, the Government Records Council (“Council”) considered the February 21, 2007 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. While the Custodian may have verbally contacted the Complainant within the statutorily mandated seven (7) business day time frame required to respond to OPRA requests, she failed to do so in writing, therefore creating a “deemed” denial of the request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i. and the Council’s decision in John Paff v. Bergen County Prosecutor’s Office, GRC Complaint No. 2005-115 (March 2006). However, the Custodian certifies that she has provided all the responsive documents and the Complainant states that he has since received all the requested documents.
2. OPRA does not limit the number of times a Complainant may file a Denial of Access Complaint with the GRC. As such, the GRC does not have the authority to limit or remove this right from the Complainant pursuant to N.J.S.A. 47:1A-6 and N.J.S.A. 47:1A-7.b.
3. As the Custodian has certified that all records responsive have been provided to the Complainant and that she had no knowledge of any permits released to the Complainant on June 29, 2006, as said permits did not come from her office, the Custodian’s actions appear merely negligent, heedless or unintentional. As such, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within



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

Final Decision Rendered by the
Government Records Council
On The 28th Day of February, 2007

Vincent P. Maltese, Chairman
Government Records Council

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

Robin Berg Tabakin, Vice Chairman & Secretary
Government Records Council

Decision Distribution Date: March 7, 2007

**Findings and Recommendations of the Executive Director
February 28, 2007 Council Meeting**

Michael DeLuca¹

GRC Complaint No. 2006-126

Complainant

v.

Town of Guttenburg²
Custodian of Records

Records Relevant to Complaint: The full file on the Galaxy Towers from the Fire Sub Code Official(s) relating to the fire safety system installation from the onset of the installation to the present, including but not limited to:

1. reports
2. inspections
3. decibel readings
4. tests
5. letters to and from Galaxy management, contractors, engineers, consultants, professionals, and/or attorneys
6. violations
7. all other documents related to the fire safety system.

Request Made: April 18, 2006

Response Made: June 7, 2006 and June 21, 2006

Custodian: Linda Martin

GRC Complaint Filed: July 7, 2006

Background

April 18, 2006

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above.

May 10, 2006

Custodian's response to the Complainant's OPRA request on the sixteenth (16th) business day following receipt of such request. The Custodian states that the requested are being provided pursuant to N.J.S.A. 47:1A-1.

¹ No legal representation listed on record.

² Custodian is represented by Charles Daglian of Miller & Galdieri (Jersey City, NJ).

May 18, 2006

Letter from Complainant to Custodian. The Complainant states that it has been one month since he submitted his OPRA request. The Complainant asserts that he has received some of the requested records [on May 10, 2006], but not all of the records which were specifically named in his request. The Complainant contends that he has not yet received the decibel readings for the speakers that were installed and approved for Tower I. The Complainant requests that the Custodian provide him with said readings, approvals, permits, inspections, and any violations.

May 19, 2006

Note from Fire Sub Code Official to Custodian regarding Complainant's letter to Custodian dated May 18, 2006. The Fire Sub Code Official states that he has given the Custodian all the records and inspection reports in his possession. The Fire Sub Code Official asserts that the system is not yet complete. The Fire Sub Code Official further states that the decibel readings and the height of the speakers are required to be provided to the building once the final approvals of each tower's system have been applied. Lastly, the Fire Sub Code Official states that the Supervising Engineer has control over the decibel readings.

May 25, 2006

Letter from Complainant to Custodian. The Complainant thanks the Custodian for her response regarding the decibel readings, which the Complainant states he received on May 20, 2006. The Complainant states that it has been thirty-six (36) days since his OPRA request and asserts that he still has not received any permits or violations, or any explanation as to why these records have not been provided.

June 5, 2006

Letter from Complainant to Fire Sub Code Official. The Complainant thanks the Fire Sub Code Official for responding to his OPRA request. The Complainant asks if the engineers have taken any decibel readings for Tower I, and if so, asks if they have been submitted to the Town. The Complainant also asks what the building code requirements are regarding speaker installation and decibel readings. The Complainant additionally asks why he has not received a copy of any permits.

June 8, 2006

Letter from Fire Sub Code Official to Complainant in response to the Complainant's letter dated June 5, 2006. The Fire Sub Code Official states that he has not taken any decibel readings, but claims that someone may have. The Fire Sub Code Official states that he will receive the certification of the decibel levels once the Supervising Engineer applies for the Certificate of Approval. Regarding the Complainant's request about building code requirements, the Fire Sub Code Official states that these requirements come from The International Building Code New Jersey Edition and the Uniform Construction Code State of New Jersey Rehabilitation Sub Code. Further, the Official asserts that it was an accident that the construction permit

was not released and that hopefully this error has been corrected. Lastly, the Fire Sub Code Official asserts that he has tried to provide the Complainant with a complete copy of all the records in his possession.

June 21, 2006

Memorandum from Custodian to Complainant. The Custodian asserts that the Construction Department informed her that the Fire Sub Code Official responded to the Complainant's April 18, 2006 OPRA request. The Custodian states that the Plumbing and Electric Sub Code Officials advised her that no permits were issued for either plumbing or electric at the Galaxy Towers. Additionally, the Custodian states that the Building Sub Code Official advised her that no permits were required for asbestos removal.

June 23, 2006

Letter from Complainant to Custodian. The Complainant states that in the Custodian's letter to the Complainant dated June 21, 2006, the Custodian indicated that the Fire Sub Code Official responded to the Complainant's request. However, the Complainant contends that he filed his OPRA request with the Custodian of Records, and not the Sub Code Official. He asserts that the Sub Code Official was responding to questions the Complainant raised in separate letters to the Official. The Complainant requests the unreleased documents, or at least an explanation as to why the documents have not been released. Specifically, the Complainant requests permits and violations for the fire safety system installation at the Galaxy Towers.

June 29, 2006

Complainant receives the following permits from the Town of Guttenberg:

- Permit No. 04-285 dated October 15, 2004
- Permit No. 04-284 dated October 15, 2004
- Permit No. 04-286 dated October 15, 2004
- Permit No. 04-284 dated October 19, 2004
- Permit No. 05-011 dated January 9, 2005
- Permit No. 05-127 dated May 12, 2005
- Permit No. 05-214 dated July 6, 2005
- Permit No. 05-233 dated July 13, 2005

July 7, 2006

Denial of Access Complaint filed with the Government Records Council ("GRC") with the following attachments:

- Complainant's OPRA request dated April 18, 2006
- Letter from Complainant to Custodian dated May 18, 2006
- Letter from Complainant to Custodian dated May 25, 2006
- Letter from Complainant to Fire Sub Code Official dated June 5, 2006
- Letter from Complainant to Custodian dated June 23, 2006

- Memorandum from Custodian to Complainant dated June 21, 2006
- Letter from Complainant to Custodian dated July 3, 2006

The Complainant states that on April 18, 2006, he submitted an OPRA request for the full file regarding the fire safety system installation at the Galaxy Towers. He claims that for over two (2) months, he received parts of this request, and continued to submit correspondence to the Custodian requesting the missing documents. Specifically, the Complainant states that on May 18, 2006, he sent the Custodian a letter requesting decibel readings and permits. In response, the Complainant states that he received a letter from the Fire Sub Code Official indicating that no decibel reading reports exist. The Complainant states that he contacted the Custodian again on May 25, 2006 requesting permits and in response received another letter from the Fire Sub Code Official, but still no permits. The Complainant then states that he forwarded a letter to the Fire Sub Code official requesting the permits as the Custodian indicated that she can only provide what the Fire Sub Code Official provides her. The Complainant asserts that he received the final documents (permits) on June 29, 2006. He states that he sent the Custodian and Fire Sub Code Official approximately six (6) letters requesting permits and is alleging an unlawful denial to such records.

July 17, 2006

Offer of Mediation sent to both parties. Neither party agreed to mediate this complaint.

August 2, 2006

Request for Statement of Information sent to the Custodian.

August 8, 2006

Custodian's Statement of Information ("SOI") with the following attachments:

- Letter from Walter T. Gorman of Consulting Engineers to Electrical Sub Code Official dated July 8, 2004
- Electrical Plan Review for Galaxy Towers/Fire Alarm dated July 14, 2004
- Temporary Fire Alarm System Test and Inspection Summary Report dated March 3, 2005
- Inter-Agency Request Form for the Bureau of Fire Safety regarding Galaxy Towers dated May 31, 2005
- Letter from Electrical Sub Code Official to Walter T. Gorman of Consulting Engineers dated September 7, 2005
- Letter from Electrical Sub Code Official to Walter T. Gorman of Consulting Engineers dated October 3, 2005
- Letter from Technical Fire Services, Inc. to Fire Sub Code Official dated November 2, 2005
- Letter from Technical Fire Services, Inc. to Fire Sub Code Official dated December 10, 2005
- Complainant's OPRA request dated April 19, 2006
- Custodian's response to Complainant's OPRA request dated May 10, 2006

- Letter from Complainant to Custodian dated May 18, 2006
- Letter from Complainant to Custodian dated May 25, 2006
- Untitled form for Tower I including information request for ceiling height and variance for each unit
- Building Technologies Group, Inc. Field Device Detail Report for Galaxy Tower I (not dated)

The Custodian certifies that she has attached all of the documents that were forwarded to the Complainant in response to his April 18, 2005 request. The Custodian contends that the Complainant makes requests on a particular day, and as he receives the responsive records, expands his request and claims that the Town has not complied with his initial request. The Custodian certifies that she has also attached the Complainant's follow-up letters after the Custodian provided the Complainant with some responsive records on May 10, 2006. The Custodian also certifies that on June 21, 2006, she advised the Complainant that there were no permits issued and that she had provided him with all the records responsive to the request. Additionally, the Custodian certifies that she not only provided the Complainant with all available documents, but she even created documents in response to his request. She also certifies that the Town has a longstanding offer with the Complainant in which he can review any files in the Town and identify which documents he would like copied.

The Custodian requests that the GRC do something to stop the Complainant from harassing the Town. The Custodian requests that the GRC dismiss this complaint and issue an order that the Complainant cannot file any new complaints without prior approval from a GRC official.

August 11, 2006

The Complainant's response to the Custodian's SOI. The Complainant asserts that he did not expand his request, as his original request was for the entire file on the installation of the fire safety system. The Complainant asserts that the permits and decibel readings would be included in the file. The Complainant contends that he sent follow-up letters to the Custodian indicating that he had not yet received any of the requested permits.

The Complainant states that upon speaking with the Inspector, the Complainant was informed that he did not receive any permits as the Town misunderstood his request, despite the fact that the Complainant specifically mentions permits in his follow-up letters to the Custodian. The Complainant also states that it took the Inspector from April 18, 2006 to June 6, 2006 to inform him that no decibel readings exist. Additionally, the Complainant states that the Inspector memorialized said response in writing on June 8, 2006.

The Complainant claims that the Custodian's statement that all records responsive were provided and that there were no permits issued are false. The Complainant asserts that on June 29, 2006, he received all the permits for the fire safety system. The Complainant also states that via letter dated July 3, 2006, he thanked the Custodian for releasing the requested permits. As such, the Complainant claims that it is a fabrication for the Custodian to declare that she notified the Complainant that no permits existed.

August 17, 2006

Letter from Complainant to GRC. The Complainant states that he has enclosed the permits that he received on June 29, 2006 from the Town of Guttenburg in response to his OPRA request which is the subject of this complaint. He states that he does not understand how the Custodian could certify that she notified the Complainant that no permits existed.

December 1, 2006

Letter from GRC to Custodian's Counsel. GRC requests a legal certification signed by the Custodian of Records responding to the following questions:

1. Who initially responded to the Complainant's April 18, 2006 OPRA request and on what date?
2. Who released the permits to the Complainant on June 29, 2006 and on what date did they become available?

December 6, 2006

Custodian's certification in response to GRC's letter dated December 1, 2006. The Custodian certifies that she verbally advised the Complainant that she would not be able to provide the requested records within the seven (7) business day time frame. The Custodian certifies that the only record she can provide to the GRC is a letter to the Complainant dated June 7, 2006, in which the Custodian informs the Complainant that she still required additional time to fulfill his records request. The Custodian also certifies that on June 21, 2006, she advised the Complainant that no permits had been issued based on information she received from the Inspectors of the Building Department. The Custodian further certifies that she has no knowledge of any permits released to the Complainant on June 29, 2006, because said permits did not come from her office. The Custodian claims that the Complainant may have received these documents directly from the Inspectors, but certifies that she cannot investigate the matter further because the Inspectors in question have since resigned their positions.

Analysis

Whether the Custodian unlawfully denied access to the requested record(s)?

OPRA provides that:

“...government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions...*”
(Emphasis added.) N.J.S.A. 47:1A-1.

Additionally, OPRA defines a government record as:

“... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on file ... or that has been received* in the course of his or its official business ...” (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA provides that:

“...[i]f the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor. The custodian shall sign and date the form and provide the requestor with a copy thereof ...” (Emphasis added.) N.J.S.A. 47:1A-5.g

Additionally, OPRA provides that:

“[u]nless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record *shall grant access ... or deny a request for access ... as soon as possible, but not later than seven business days after receiving the request ...* In the event a custodian fails to respond within seven business days after receiving a request, *the failure to respond shall be deemed a denial of the request ...*” (Emphasis added.) N.J.S.A. 47:1A-5.i.

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

“...[t]he public agency shall have the burden of proving that the denial of access is authorized by law...” N.J.S.A. 47:1A-6.

The Complainant states that on April 18, 2006, he submitted an OPRA request for the full file regarding the fire safety system installation at the Galaxy Towers. The Complainant claims that for over two (2) months, he received parts of this request, and continued to submit correspondence to the Custodian requesting the missing documents. The Complainant states that upon speaking with the Inspector, he was informed that he did not receive any permits as the Town misunderstood his request, despite the fact that the Complainant specifically mentions permits in his follow-up letters to the Custodian. The Complainant also states that it took the Inspector from April 18, 2006 to June 6, 2006 to inform him that no decibel readings exist. Additionally, the Complainant states that the Inspector memorialized said response in writing on June 8, 2006. The Complainant asserts that he received the final documents (permits) on June 29, 2006. The Complainant states that he sent the Custodian and Fire Sub Code Official approximately six (6) letters requesting permits and claims that they were willfully denying public records.

The Custodian certifies that after receiving the Complainant's April 18, 2006 OPRA request, the Custodian verbally advised the Complainant that she would not be able to provide the requested records within the seven (7) business day time frame. The Custodian certifies that via letter dated June 7, 2006, she again notified the Complainant that she required additional time to fulfill the Complainant's OPRA request. The Custodian also certifies that on June 21, 2006, she advised the Complainant that no permits had been issued, based on information the Custodian received from the Inspectors of the Building Department. The Custodian certifies that she has no knowledge of any permits released to the Complainant on June 29, 2006, as said permits did not come from her office. The Custodian claims that the Complainant may have received these documents directly from the Inspectors, but certifies that she cannot investigate the matter further as the Inspectors in question have since resigned their positions. However, the Custodian certifies that she has otherwise provided the Complainant with all records responsive to his request.

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. 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.

Further, pursuant to N.J.S.A. 47:1A-5.i., a custodian must either grant or deny access to a government record within seven (7) business days of receiving said request. Additionally, N.J.S.A. 47:1A-5.g. provides that if a custodian is unable to comply with a records request, he/she must indicate so in writing and provide said response to the requestor. In this case, the Custodian certifies that she verbally advised the Complainant that she would not be able to comply with his April 18, 2006 OPRA request within the seven (7) business day time frame. The Custodian also certifies that she again notified the Complainant via letter dated June 7, 2006, that she still required additional time to fulfill his request.

In John Paff v. Bergen County Prosecutor's Office, GRC Complaint No. 2005-115 (March 2006), the Custodian knew he needed additional time in order to respond to the Complainant's request, but failed to obtain a written agreement from the Complainant extending the seven (7) business day time frame required under OPRA to respond. The Council held that the Custodian's failure to obtain a written agreement extending the seven (7) business day time period resulted in a "deemed" denial of the request.

Similarly in this case, if the Custodian required additional time beyond the seven (7) business day time period required by OPRA in order to satisfy the Complainant's request, the Custodian should have obtained a written agreement from the Complainant in order to do so. While the Custodian may have verbally contacted the Complainant within the statutorily mandated seven (7) business day time frame required to respond to OPRA requests, she failed to do so in writing, therefore creating a "deemed" denial of the request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i. and the Council's decision in Paff. However, the Custodian certifies that she has provided all the responsive documents and the Complainant states that he has since received all the requested documents.

Whether the Government Records Council has the authority to limit the Complainant's ability to file Denial of Access Complaints?

OPRA states that:

“[a] person who is denied access to a government record by the custodian of the record, at the option of the requestor, may:

- institute a proceeding to challenge the custodian's decision by filing an action in Superior Court which shall be heard in the vicinage where it is filed by a Superior Court Judge who has been designated to hear such cases because of that judge's knowledge and expertise in matters relating to access to government records; or
- in lieu of filing an action in Superior Court, *file a complaint with the Government Records Council...*

The right to institute any proceeding under this section shall be solely that of the requestor... (Emphasis added.) N.J.S.A. 47:1A-6.

OPRA also provides that:

“[t]he Government Records Council shall... receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian...” N.J.S.A. 47:1A-7.b.

The Custodian claims that the Complainant is harassing the Town of Guttenberg by filing several Denial of Access Complaints. The Custodian requests that the GRC issue an order that the Complainant cannot file any new complaints without prior approval from a GRC official.

In Thomas Caggiano v. Borough of Stanhope, GRC Complaint No. 2005-211 et seq. (January 2006)³, the Council held that “OPRA does not limit the number of times a requestor may ask for the same record even when the record was previously provided.” While the facts of this complaint are not exactly the same as those in Caggiano, the same reasoning should apply. Pursuant to N.J.S.A. 47:1A-6, the Complainant has a right to file a complaint with the GRC if he believes he has been denied access to records. OPRA does not limit the number of times a Complainant may file a Denial of Access Complaint with the GRC. As such, the GRC does not have the authority to limit or remove this right from the Complainant pursuant to N.J.S.A. 47:1A-6 and N.J.S.A. 47:1A-7.b.

Whether the Custodian's actions rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances?

OPRA states that:

³ Actual citation is Thomas Caggiano v. Borough of Stanhope, GRC Case Nos. 2005-211, 2005-226, 2005-227, 2005-228, 2005-229, 2005-230, 2005-231, 2005-232, 2005-233, 2005-234, 2005-235, 2005-250, and 2005-252.

“[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty ...” N.J.S.A. 47:1A-11.a.

OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states:

“... If the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA]...” N.J.S.A. 47:1A-7.e.

The Complainant states that on April 18, 2006, he submitted an OPRA request for the full file regarding the fire safety system installation at the Galaxy Towers. The Complainant claims that for over two (2) months, he received parts of this request and continued to submit correspondence to the Custodian requesting the missing documents. The Complainant asserts that he received the final documents (permits) on June 29, 2006. The Complainant states that he sent the Custodian and Fire Sub Code Official approximately six (6) letters requesting permits and claims that they were willfully denying public records.

The Custodian certifies that after receiving the Complainant’s April 18, 2006 OPRA request, the Custodian verbally advised the Complainant that she would not be able to provide the requested records within the seven (7) business day time frame. The Custodian certifies that via letter dated June 7, 2006, she again notified the Complainant that she required additional time to fulfill the Complainant’s OPRA request. The Custodian also certifies that on June 21, 2006, she advised the Complainant that no permits had been issued, based on information the Custodian received from the Inspectors of the Building Department. The Custodian certifies that she has no knowledge of any permits released to the Complainant on June 29, 2006, as said permits did not come from her office. The Custodian claims that the Complainant may have received these documents directly from the Inspectors, but certifies that she cannot investigate the matter further as the Inspectors in question have since resigned their positions. However, the Custodian certifies that she has otherwise provided the Complainant with all records responsive to his request.

Certain legal standards must be considered when making the determination of whether the Custodian’s actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian’s actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170 at 185 (2001); the Custodian must have had some knowledge that his actions were wrongful (Felder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian’s actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414

(1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (Berg); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J.Super. 86 (App. Div. 1996) at 107).

Although the Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i for failing to provide the Complainant with a written response to his request within the statutorily mandated seven (7) business days, the Custodian certifies that she has provided the Complainant with all records responsive. Additionally, the Complainant states that as of June 29, 2006, he has received all the requested records. However, the Complainant claims that the Custodian's statement that no permits existed is false as he received the requested permits on June 29, 2006. The Custodian, however, certifies that she has no knowledge of any permits released to the Complainant on June 29, 2006, as said permits did not come from her office. The Custodian claims that the Complainant may have received these documents directly from the Inspectors, but certifies that she cannot investigate the matter further as the Inspectors in question have since resigned their positions.

Therefore, as the Custodian has certified that all records responsive have been provided to the Complainant and that she had no knowledge of any permits released to the Complainant on June 29, 2006, as said permits did not come from her office, the Custodian's actions appear merely negligent, heedless or unintentional. As such, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

4. While the Custodian may have verbally contacted the Complainant within the statutorily mandated seven (7) business day time frame required to respond to OPRA requests, she failed to do so in writing, therefore creating a "deemed" denial of the request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i. and the Council's decision in John Paff v. Bergen County Prosecutor's Office, GRC Complaint No. 2005-115 (March 2006). However, the Custodian certifies that she has provided all the responsive documents and the Complainant states that he has since received all the requested documents.
5. OPRA does not limit the number of times a Complainant may file a Denial of Access Complaint with the GRC. As such, the GRC does not have the authority to limit or remove this right from the Complainant pursuant to N.J.S.A. 47:1A-6 and N.J.S.A. 47:1A-7.b.

6. As the Custodian has certified that all records responsive have been provided to the Complainant and that she had no knowledge of any permits released to the Complainant on June 29, 2006, as said permits did not come from her office, the Custodian's actions appear merely negligent, heedless or unintentional. As such, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By:

Dara Lownie
Case Manager

Approved By:

Catherine Starghill, Esq.
Executive Director

February 21, 2007