

INTERIM ORDER
December 14, 2006 Government Records Council Meeting

James Donato
(On behalf of Capitol Publishing)
Complainant
v.
Jersey City Police Department
Custodian of Record

Complaint No. 2005-251

At the December 14, 2006 public meeting, the Government Records Council ("Council") considered the December 7, 2006 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. The rate established in the Custodian's municipal code does not qualify as "a fee prescribed by law or regulation" as was contemplated in OPRA under N.J.S.A. 47:1A-5.b. Additionally, the Custodian has not demonstrated with any certainty that the copying fee established in its municipal code represents the actual cost of duplication as is required in N.J.S.A. 47:1A-5.c.
2. Given the specific statutory language of N.J.S.A. 39:4-131, the additional fee of up to \$5.00 for the first three pages and \$1.00 per page thereafter may only be added to the enumerated OPRA copying rates listed in N.J.S.A. 47:1A-5.b. to cover the administrative costs of mailing the reports when the records request is not made in person.
3. If the Custodian believes that a special service charge is warranted pursuant to N.J.S.A. 47:1A-5.c. because an extraordinary expenditure of time and effort is required to fulfill this records request, then the Custodian must address the fourteen (14) point criteria established by the GRC for evaluating special service charges. **The Custodian shall provide the Executive Director certified responses to the fourteen (14) point criteria established by the GRC for evaluating special service charges or a certification that there will be no special service charge assessed to the Complainant within five (5) business days from receipt of this Interim Order.**
4. Absent adequate justification for a special service charge, the Custodian unlawfully imposed a charge of \$5.00 for the first page and \$1.00 for each page thereafter for the auto accident reports requested by the Complainant.

Interim Order Rendered by the

Government Records Council
On The 14th Day of December, 2006

Robin Berg Tabakin, Vice Chairman & Secretary
Government Records Council

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

Kathryn Forsyth
Government Records Council

Decision Distribution Date: December 19, 2006

**Findings and Recommendations of the Executive Director
December 14, 2006 Council Meeting**

**James Donato
(On behalf of Capitol Publishing)¹
Complainant**

GRC Complaint No. 2005-251

v.

**Jersey City Police Department²
Custodian of Records**

Records Relevant to Complaint: Page one of all accident reports with the dates October 13, 2005 and October 14, 2005.

Request Made: October 19, 2005

Response Made: October 27, 2005

Custodian: Robert Byrne

GRC Complaint filed: December 9, 2005

Background

October 19, 2005

Complainant's Open Public Records Act ("OPRA") request asking for the records enumerated above.

October 21, 2005

Custodian's response to the OPRA request. Letter from the Jersey City Clerk informing the Complainant that the Custodian's office received the OPRA request.

October 27, 2005

Custodian Counsel's response to the Complainant's records request. Counsel informed the Complainant, within seven (7) business days of receipt of the OPRA request, that the fees for copies of traffic accident reports are \$5.00 per report. Custodian's Counsel states that Section 160-1(7)(i) of the City Code established this fee pursuant to N.J.S.A. 47:1A-5.c. of OPRA. The Custodian also states that pursuant to N.J.S.A. 39:4-131, a New Jersey municipality may charge \$5.00 per traffic report if the report is mailed to the requestor. Custodian's Counsel goes on to state, however, that if the requestor picks up the report in person, the charge is set forth under OPRA in N.J.S.A. 47:1A-5.b.

November 18, 2005

¹ No legal representative on record.

² Custodian is represented by William C. Matsikoudis, Jersey City Corporation Counsel (offices located in the municipal building).

Custodian Counsel's letter to the Complainant. Custodian's Counsel states that the City disagrees with the Complainant's position that pursuant to N.J.S.A. 39:4-131, the City may only charge the \$5.00 fee if a request for a report is made by mail. Counsel further states that the \$5.00 fee is authorized pursuant to N.J.S.A. 47:1A-5.c. of OPRA.

December 9, 2005

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

- October 19, 2005 – Complainant's OPRA request
- October 21, 2005 – Letter from the Jersey City Clerk informing the Complainant that the Custodian's received the OPRA request
- October 27, 2005 – Letter from Custodian's Counsel to the Complainant
- November 18, 2005 – Letter from Custodian's Counsel to the Complainant

The Complainant alleges that the Custodian has not demonstrated that its actual cost for producing the requested records, page one only, exceeds the rates established by N.J.S.A. 47:1A-5.b.

December 15, 2005

Offer of Mediation sent to both parties. The Custodian declined mediation of this complaint.

December 23, 2005

Request for Statement of Information ("SOI") sent to the Custodian.

January 17, 2006

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

- October 19, 2005 – Complainant's OPRA request
- October 27, 2005 – Letter from Custodian's Counsel to the Complainant
- November 18, 2005 – Letter from Custodian's Counsel to the Complainant
- Ordinance of Jersey City, N.J. – Section 160-1(A)(7)
- January 17, 2006 – Certification of William Stetson (Captain of the Jersey City Police Department)
- January 17, 2006 – Letter from Custodian's Counsel to the GRC

The Custodian certifies that Section 160-1 of the Municipal Code establishes various fees that the City is authorized by law to charge for certain services. The Custodian states that on August 13, 2003, the Municipal Council enacted an amendment to Section 160-1(A)(7) that established the fee to provide a motor vehicle accident report at \$5.00 for the first page and \$1.00 for each additional page.

Capt. William Stetson, of the Jersey City Police Department, certifies that \$5.00 is a reasonable fee to provide a motor vehicle accident report based upon the process involved in locating, redacting and providing a copy of a motor vehicle accident report. Custodian's Counsel states that the City's legal position is that because of the work

involved in producing a redacted copy of a motor vehicle accident report, a reasonable fee is \$5.00 for the first page and \$1.00 for each additional page pursuant to N.J.S.A. 47:1A-5.c. and the amended the fee section of the Municipal Code.

Analysis

Whether the Custodian unlawfully imposed a charge of \$5.00 for the first page of all accident reports requested?

OPRA sets forth the amount to be charged for copies of government records in printed form. Specifically, OPRA provides:

“[a] copy or copies of a government record may be purchased by any person upon payment of the fee prescribed by law or regulation, or if a fee is not prescribed by law or regulation, upon payment of the actual cost of duplicating the record. Except as otherwise provided by law or regulation, the fee assessed for the duplication of a government record embodied in the form of printed matter shall not exceed the following:

- first page to tenth page, \$0.75 per page;
- eleventh page to twentieth page, \$0.50 per page;
- all pages over twenty, \$0.25 per page.

The actual cost of duplicating the record shall be the cost of materials and supplies used to make a copy of the record, but shall not include the cost of labor or other overhead expenses associated with making the copy except as provided for in subsection c. of this section. If a public agency can demonstrate that its actual costs for duplication of a government record exceed the foregoing rates, the public agency shall be permitted to charge the actual cost of duplicating the record.” N.J.S.A. 47:1A-5.b.

OPRA also provides that “in the case of a municipality, rates for the duplication of particular records when the actual cost of copying exceeds the foregoing rates shall be established in advance by ordinance.” N.J.S.A. 47:1A-5.c.

Additionally, OPRA provides that a public agency may charge a special service charge in certain circumstances. Specifically, OPRA states that:

“[w]henever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined, or copied ... is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an extraordinary expenditure of time and effort to accommodate the request, the public agency may charge, in addition to the actual cost of duplicating the record, a special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or

copies; ... The requestor shall have the opportunity to review and object to the charge prior to it being incurred.” (Emphasis added.) N.J.S.A. 47:1A-5.c.

The Custodian certifies that Section 160-1 of the Municipal Code establishes various fees that the City is authorized by law to charge for certain services. The Custodian states that on August 13, 2003, the Municipal Council enacted an amendment to Section 160-1(A)(7) that established the fee for a motor vehicle accident report at \$5.00 for the first page and \$1.00 for each additional page.

The Complainant asserts that the Custodian may not charge copying rates in excess of those enumerated in OPRA because the Custodian has not demonstrated that its actual cost for producing the requested records, page one only, exceeds the rates established by N.J.S.A. 47:1A-5.b.

The Custodian certifies that \$5.00 is a reasonable fee to provide a motor vehicle accident report based upon the process involved in locating, redacting and providing a copy of a motor vehicle accident report. Custodian’s Counsel states that the City’s legal position is that because of the work involved in producing a redacted copy of a motor vehicle accident report, a reasonable fee is \$5.00 for the first page and \$1.00 for each additional page pursuant to N.J.S.A. 47:1A-5.c. and the amended the fee section of the Municipal Code.

OPRA provides that the cost for copies of government records shall be (1) a fee prescribed by law or regulation (presumably state or federal), or (2) actual cost, if a fee is not prescribe by law or regulation, not to exceed the enumerated rates in N.J.S.A. 47:1A-5.b. (\$0.75/\$0.50/\$0.25). This provision goes on to state that a public agency may charge a fee higher than the enumerated rates if the agency can demonstrate that the actual cost to make copies exceed the enumerated rates (N.J.S.A. 47:1A-5.b.) and such actual cost is established by ordinance in the case of a municipality (N.J.S.A. 47:1A-5.c.).

In this case, the rate established in the Custodian’s municipal code does not qualify as “a fee prescribed by law or regulation” as was contemplated in OPRA under N.J.S.A. 47:1A-5.b. Additionally, the Custodian has not demonstrated with any certainty that the copying fee established in its municipal code represents the actual cost of duplication as is required in N.J.S.A. 47:1A-5.c.

Additionally, the Custodian asserts that a statute other than OPRA agrees with the Custodian’s charge of \$5.00 for the first page of the requested records. Specifically, the Custodian asserts that N.J.S.A. 39:4-131 allows a custodian to charge \$5.00 regardless of whether the request for an auto accident report is made in person. The Custodian’s assertion is incorrect.

That statute actually provides that written auto accident reports required to be forwarded by law enforcement officers and the information contained therein shall not be privileged or held confidential. N.J.S.A. 39:4-131. Further the statute provides that every citizen of the state shall have the right, during regular business hours and under supervision, to inspect and copy such reports and shall also have the right *in person* to

purchase copies of the reports at the same fee established by [OPRA]. The statute also provides that if the copies of reports are requested *other than in person*, an additional fee of up to \$5.00 for the first three pages and \$1.00 per page thereafter may be added to cover the administrative costs of the report. N.J.S.A. 39:4-131.

Therefore, given the specific statutory language of N.J.S.A. 39:4-131, the additional fee of up to \$5.00 for the first three pages and \$1.00 per page thereafter may only be added to the enumerated OPRA copying rates to cover the administrative costs of mailing the reports when the requests are not made in person.

Also, while the Custodian certified that the \$5.00 fee for the first page and \$1.00 for each addition page is warranted given the amount of work involved in producing a redacted copy of a motor vehicle accident report, such fee is not supported in OPRA pursuant to N.J.S.A. 47:1A-5.b. (i.e. the enumerated copying rates). However, the fee may be supported in whole or in part under N.J.S.A. 47:1A-5.c. with a special service charge.

OPRA provides that whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined, or copied ... is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an extraordinary expenditure of time and effort to accommodate the request, the public agency may charge, in addition to the actual cost of duplicating the record, a special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies. N.J.S.A. 47:1A-5.c.

If the Custodian believes that a special service charge is warranted pursuant to N.J.S.A. 47:1A-5.c. because an extraordinary expenditure of time and effort is required to fulfill this records request, then the Custodian must address the fourteen (14) point criteria established by the GRC for evaluating special service charges. Specifically, the Custodian must respond to the following questions:

Question	Custodian's Response
1. The volume, nature, size, number of government records involved.	
2. The period of time over which the records were received.	
3. Whether some or all of the records sought are archived.	
4. The amount of time required for a government employee to locate, retrieve and assemble the documents for copying.	

5. The amount of time, level, rate and number, if any required to be expended by government employees to monitor the inspection or examination.	
6. The amount of time required to return documents to their original storage place.	
7. The size of the agency.	
8. The number of employees available to accommodate documents requested.	
9. The availability of information technology and copying capabilities.	
10. What was requested?	
11. The level(s) of skill necessary to accommodate the request.	
12. The reason(s) that the agency employed, or intends to employ the particular level(s) of skill above.	
13. A detailed estimate categorizing the hours needed to identify, copy or prepare for inspection, produce and return the requested documents.	
14. Who in the agency will perform the work associated with each request?	

Absent adequate justification for a special service charge (determined by the GRC evaluating the Custodian's responses to the above-mentioned fourteen (14) point criteria),

the Custodian may only charge the enumerated copying rates listed in OPRA when responding to an OPRA records request made in person for copies of auto accident reports consistent with N.J.S.A. 47:1A-5.b. If the records request is not made in person, the Custodian may charge the additional fee of up to \$5.00 for the first three pages and \$1.00 per page thereafter to cover the administrative costs of mailing the reports pursuant to N.J.S.A. 39:4-131. Thus, the Custodian unlawfully imposed a charge of \$5.00 for the first page and \$1.00 for each page thereafter for the auto accident reports requested by the Complainant.

Conclusions and Recommendations

The Executive Director respectfully recommends that the Council find that:

5. The rate established in the Custodian's municipal code does not qualify as "a fee prescribed by law or regulation" as was contemplated in OPRA under N.J.S.A. 47:1A-5.b. Additionally, the Custodian has not demonstrated with any certainty that the copying fee established in its municipal code represents the actual cost of duplication as is required in N.J.S.A. 47:1A-5.c.
6. Given the specific statutory language of N.J.S.A. 39:4-131, the additional fee of up to \$5.00 for the first three pages and \$1.00 per page thereafter may only be added to the enumerated OPRA copying rates listed in N.J.S.A. 47:1A-5.b. to cover the administrative costs of mailing the reports when the records request is not made in person.
7. If the Custodian believes that a special service charge is warranted pursuant to N.J.S.A. 47:1A-5.c. because an extraordinary expenditure of time and effort is required to fulfill this records request, then the Custodian must address the fourteen (14) point criteria established by the GRC for evaluating special service charges. **The Custodian shall provide the Executive Director certified responses to the fourteen (14) point criteria established by the GRC for evaluating special service charges or a certification that there will be no special service charge assessed to the Complainant within five (5) business days from receipt of this Interim Order.**
8. Absent adequate justification for a special service charge, the Custodian unlawfully imposed a charge of \$5.00 for the first page and \$1.00 for each page thereafter for the auto accident reports requested by the Complainant.

Prepared and
Approved By:

Catherine Starghill, Esq.
Executive Director

December 7, 2006