



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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CATHERINE STARGHILL Esq., Executive Director

FINAL DECISION

February 28, 2007 Government Records Council Meeting

Bernard Laufgas
Complainant
v.
City of Paterson
Custodian of Record

Complaint No. 2006-23

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. As OPRA did not become effective until 2002, the Complainant’s June 9, 1999 request does not constitute a valid OPRA request. Therefore, the Council does not have the authority to adjudicate this portion of the complaint, and as such, this portion of the Complaint should be dismissed.
2. As the Custodian stated specific reasons for the denial of access and offered alternatives that would clarify the request, the Custodian has met the burden of proving that the denial of access was proper under OPRA pursuant to Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super 534, 546 (March 2005), Bent v. Stafford Police Department, 381 N.J. Super 30, 37 (October 2005)¹, New Jersey Builders Association v. New Jersey Council on Affordable Housing, App.Div. (Decided January 24, 2007), Liebel v. Manalapan Englishtown Regional Board of Education, GRC Complaint No. 2004-51 (September 2004) and Moore v. Township of Old Bridge, GRC Complaint No. 2005-80 (August 2005).
3. As the Custodian failed to provide the Complainant with a written response to his December 15, 2005 and December 19, 2005 requests within the statutorily mandated seven (7) business days, the Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. which resulted in a “deemed” denial of the requests.

¹ The Appellate decision affirms GRC Complaint No. 2004-78 (October 2004).



4. The Complainant's December 15, 2005 and December 19, 2005 requests were overbroad and would likely have substantially disrupted agency operations, pursuant to Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super 534, 546 (March 2005), Bent v. Stafford Police Department, 381 N.J. Super 30, 37 (October 2005)² and New Jersey Builders Association v. New Jersey Council on Affordable Housing, App.Div. (Decided January 24, 2007), as the records requested in these requests were the same as the records requested in the Complainant's December 1, 2005 request.

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

² The Appellate decision affirms GRC Complaint No. 2004-78 (October 2004).

**Findings and Recommendations of the Executive Director
February 28, 2006 Council Meeting**

Bernard Laufgas³

GRC Complaint No. 2006-23

Complainant

v.

City of Paterson⁴

Custodian of Records

Records Relevant to Complaint:

- **June 9, 1999 request:**
 1. City of Paterson's Transition Plan for all City owned buildings
- **December 1, 2005 request:**
 1. All contracts (bids or non bids) for the years 1990-2005
 2. Ordinances and resolutions for the years 1990-2005
 3. All records of the Board of Adjustment for the years 1990-2005
 4. All records of the Planning Board for the years 1990-2005
- **December 15, 2005 request:**
 1. All contracts (bids or non bids) from 1995-present
 2. Ordinances and resolutions from 1995-present
 3. All City Council meeting minutes – open and closed from 1995-present
 4. Minutes of the Board of Adjustment and the Planning Board from 1995-present
- **December 19, 2005 request:**
 1. All contracts (bids or non bids) from 1990-2000
 2. Ordinances and resolutions from 1990-2000
 3. All City Council meeting minutes – open and closed from 1990-2000
 4. Open and closed minutes of the Board of Adjustment and the Planning Board from 1990-2000
 5. Transition Plan pursuant to the Americans with Disabilities Act (“ADA”)
 6. Appointed Committee records pursuant to ADA

Requests Made: June 9, 1999, December 1, 2005, December 15, 2005, and December 19, 2005

Response Made: December 12, 2005 and December 14, 2005

Custodian: Jane E. Williams-Warren

GRC Complaint Filed: January 24, 2006

³ No legal representation on record.

⁴ Custodian is represented by Susan E. Champion, Esq., Corporation Counsel for the City of Paterson.

Background

June 9, 1999

Complainant's request under the Americans with Disabilities Act for a copy of the City of Paterson's Transition Plan for all City owned buildings.

December 1, 2005

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

December 12, 2005

Custodian's response to the OPRA request. The Custodian responded to the Complainant's OPRA request on the seventh (7th) business day following the date of the request. The Custodian states that the Complainant's request for all contracts from 1990-2005 would substantially disrupt agency operations and therefore she conditionally denies access pursuant to N.J.S.A. 47:1A-5.g. The Custodian requests that the Complainant provide any additional information regarding this request so that she may narrow the search. The Custodian additionally states that she will provide an itemized list of the City's 2005 contracts, should the Complainant choose to accept it.

Regarding the request for copies of all ordinances and resolutions for the years 1990-2005, the Custodian states that she will be able to advise the Complainant by December 20, 2005 if she can provide such records without disrupting agency operations. The Custodian claims that in the event that she cannot provide all of the documents, she will present a reasonable solution to the matter.

Further, the Custodian denies access to the records of the Board of Adjustment and the Planning Board for the years 1990-2005 as it would substantially disrupt agency operations pursuant to N.J.S.A. 47:1A-5.g. The Custodian requests that the Complainant be more specific regarding the records that he is seeking. The Custodian additionally states that any documents provided will be sent via disk in order to comply with Judge Passero's court order restraining the Complainant's presence in City offices.

December 14, 2005

Custodian's supplemental response to the Complainant's December 1, 2005 OPRA request. The Custodian states that the requested ordinances and resolutions for the years 1990-2005 can be provided upon payment of \$500.00 to cover the cost of the consultant's use of information technology, clerical and supervisory assistance, as well as the cost of the computer diskette. The Custodian claims that said cost is significantly less than the cost of providing the actual paper copies.

December 15, 2005

Complainant's second OPRA request. The Complainant requests the records relevant to this complaint listed above. The Complainant states that he received the Custodian's letter dated December 12, 2005 and he finds it to be unacceptable. He asserts that he does not want an alternative to receiving the requested records.

December 19, 2005

Complainant's third OPRA request. The Complainant requests the records relevant to this complaint listed above.

December 22, 2005

Letter from Complainant to Custodian. The Complainant states that he received the Custodian's letter dated December 14, 2005. He asserts that his OPRA request is for inspection only and therefore he does not want to have the files put on computer diskette. The Complainant contends that the Custodian violated N.J.S.A. 47:1A-5.g. by failing to indicate the specific legal basis for denying his request. He also states that inspection of the requested documents may take a few days and suggests that a police officer supervise the inspection in the library, as the Complainant is prohibited from entering City buildings.

January 24, 2006

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

- Complainant's June 9, 1999 request for records
- Complainant's OPRA request dated December 1, 2005
- Letter from Custodian to Complainant dated December 12, 2005
- Letter from Custodian to Complainant dated December 14, 2005
- Complainant's OPRA request dated December 15, 2005
- Complainant's OPRA request dated December 19, 2005
- Letter from Complainant to Custodian dated December 22, 2005

The Complainant asserts submitting requests for records on June 9, 1999, December 1, 2005, December 15, 2005, and December 19, 2005. He claims that the Custodian's responses to his requests are unreasonable as he is only seeking to inspect the records.

February 6, 2006

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

February 9, 2006

Letter of representation from the City of Paterson's Corporation Counsel to the GRC. Counsel states that the subject matter of this GRC complaint is also the subject of

pending litigation in the Superior Court of New Jersey, Passaic County, in the case of Amoresano and the City of Paterson v. Laufgas under Docket No. PAS-C-74-96.

May 16, 2006

Letter from GRC to Custodian's Counsel. The GRC requests a legal certification, signed by the Custodian of Records, pursuant to NJ Court Rules indicating whether the NJ Superior Court case, Docket No. PAS-C-74-96 has already been heard. If so, the GRC requests a copy of the Court's ruling.

May 19, 2006

Letter from Custodian's Counsel to the GRC. Counsel indicates that Docket No. PAS-C-74-96 has been heard and decided and states that she has enclosed certified copies of the Court's Order and Transcript of Motion. In said transcript, the Judge states that he cannot dismiss the Complainant's appeal to the GRC. However, the Judge contends that the GRC should consider Judge Passero's prior rulings in their own ruling as the Complainant's request at issue is similar to what was at issue under Judge Passero.

May 23, 2006

Letter from Complainant to the GRC. The Complainant asserts that Judge Passero's 1996 Order denying his right to access public records violates the intent and purpose of Nero v. Hyland 76 N.J. 213, 221, 386 A.2d. 846 (1978) which identified that the purpose of the Right to Know Law was to promote a free flow of information.

November 1, 2006

Request for Statement of Information sent to the Custodian.

November 9, 2006

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

- Complainant's request for records dated June 9, 1999
- Letter from Complainant to Custodian dated July 6, 1999
- Complainant's OPRA request dated December 1, 2005
- Letter from Custodian to Complainant dated December 12, 2005
- Letter from Custodian to Complainant dated December 14, 2005
- Complainant's OPRA request dated December 15, 2005
- Complainant's OPRA request dated December 19, 2005
- Letter from Complainant to Custodian dated December 22, 2005
- Order of the Superior Court of NJ Chancery Division Docket No. PAS-C-74-96 dated August 7, 2006
- Amended Order of the Superior Court of NJ Chancery Division Docket No. PAS-C-74-96 dated August 7, 2006
- Letter from Custodian's Counsel to the GRC dated November 9, 2006

The Custodian certifies receiving the Complainant's OPRA requests on December 2, 2005, December 16, 2005, December 20, 2005, and December 23, 2005. The

Custodian's Counsel asserts that the City relies on the contents of its moving papers submitted in the post judgment enforcement litigation in the related court matter. Counsel also states that the City relies upon the Custodian's written responses to the Complainant's requests in an effort to resolve the matter, which were rejected by the Complainant. Additionally, Counsel states that pursuant to the enclosed transcript of the February 17, 2006 motion hearing, Judge McVeigh found that because the substance of the request at issue is similar to the one previously requested by the Complainant, which was found to be improper, the GRC should consider the prior rulings in their analysis of the Complainant's current OPRA request. Counsel states that the prior court ruling, regarding a request similar to the request at issue here, was found to be onerous and burdensome and was dismissed by the Judge. As such, Counsel contends that the current matter should also be dismissed pursuant to N.J.S.A. 47:1A-5.g. in that it would substantially disrupt agency operations following the Custodian's unsuccessful attempt to reach a reasonable solution with the Complainant.

Further, Counsel asserts that pursuant to N.J.S.A. 47:1A-9.b., permitting the Complainant's current request would be contrary to Judge Passero's prior Orders of the Superior Court. Counsel also asserts that the City's offer of limited access to the Complainant's requested records is in the form of a computer diskette at a cost of \$500.00 for consultant labor, which is significantly less than the cost of providing the actual copies based on the figure of \$56,000.00 as the cost estimate for the Complainant's 1996 records request. Counsel contends that the charge for consultant labor is warranted under N.J.S.A. 47:1A-5.d.

The Custodian's Counsel states that the City also relies on Bent v. Stafford Police Department, 381 N.J. Super. 30 (2005) and Mag Entertainment, LLC v. Division of Alcohol Beverage Control, 375 NJ Super. 534 (2005) in support of the notion that inspection of records under OPRA is subject to reasonable controls. Counsel also cites Moore v. Township of Old Bridge, GRC Complaint No. 2005-80 (August 2005), stating that the Council ruled in favor of the agency's denial of access after the requestor did not respond to the Custodian's clarification request.

Analysis

Whether the Complainant's June 9, 1999 request for records constitutes a valid OPRA request?

The Complainant asserts submitting a request for records on June 9, 1999 under the Americans with Disabilities Act. As OPRA did not become effective until 2002, the Complainant's June 9, 1999 request does not constitute a valid OPRA request. Therefore, the Council does not have the authority to adjudicate this portion of the complaint, and as such, this portion of the Complaint should be dismissed.

Whether the Custodian unlawfully denied access to the records requested on December 1, 2005, December 15, 2005, and December 19, 2005?

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 also provides that:

“...a custodian shall promptly comply with a request to inspect, examine, copy, or provide a copy of a government record...If 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... *If a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency.*” (Emphasis added.) N.J.S.A. 47:1A-5.g.

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.

Additionally, OPRA states that:

“[t]he provisions of this act...shall not abrogate or erode any executive or legislative privilege or grant of confidentiality heretofore established or recognized by the Constitution of this State, statute, court rule or judicial case law, which privilege or grant of confidentiality may duly be claimed to restrict public access to a public record or government record.” (Emphasis added.) N.J.S.A. 47:1-9.b.

The Complainant asserts submitting his OPRA requests on December 1, 2005, December 15, 2005, and December 19, 2005. The Complainant claims that the Custodian's responses to his requests are unreasonable as he is only seeking to inspect the records.

The Custodian certifies receiving the Complainant's OPRA requests on December 2, 2005, December 16, 2005, and December 20, 2005. The Custodian's Counsel contends that the GRC should consider Judge Passero's prior ruling regarding access to documents similar to those at issue in this case, in which the Judge rejected the Complainant's request as burdensome. Additionally, Counsel asserts that pursuant to N.J.S.A. 47:1A-5.g., the Complainant's request would substantially disrupt agency operations. Counsel also states that the City relies on Bent v. Stafford Police Department, 381 N.J. Super. 30 (2005) and Mag Entertainment, LLC v. Division of Alcohol Beverage Control, 375 NJ Super. 534 (2005) in support of the notion that inspection of records under OPRA is subject to reasonable controls. Counsel also cites Moore v. Township of Old Bridge, GRC Complaint No. 2005-80 (August 2005), stating that the Council ruled in favor of the agency's denial of access after the requestor did not respond to the Custodian's clarification 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.

Complainant's December 1, 2005 OPRA request

The Custodian certifies receiving said request on December 2, 2005 and provided a written response on December 12, 2005, the seventh (7th) business day following receipt of the request. A summary of the Custodian's response is detailed in the table below:

Complainant's Request	Custodian's Response
All contracts (bids or non bids) for the years 1990-2005	This request would substantially disrupt agency operations pursuant to <u>N.J.S.A. 47:1A-5.g.</u> The Custodian requests clarification of the request and states that she could provide an itemized list of 2005 contracts.
Ordinances and resolutions for the years 1990-2005	The Custodian states that she will advise the Complainant by December 20, 2005 if she can provide the records without substantially disrupting agency operations.
All records of the Board of Adjustment for the years 1990-2005	This request would substantially disrupt agency operations pursuant to <u>N.J.S.A. 47:1A-5.g.</u> The Custodian requests clarification of the request.
All records for the Planning Board for the	This request would substantially disrupt

years 1990-2005	agency operations pursuant to <u>N.J.S.A. 47:1A-5.g.</u> The Custodian requests clarification of the request.
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On December 14, 2005, the Custodian provided a subsequent response to the Complainant's request and indicated that the requested ordinances would be provided on a computer diskette upon payment of \$500.00 to cover the cost of the consultant's use of information technology, clerical and supervisory assistance, as well as the cost of the diskette. The Custodian claims that said cost is significantly less than the cost of providing the actual paper copies.

The Complainant asserts that the Custodian's response is unacceptable. The Complainant states that he does not want an alternative to inspecting the requested records.

The New Jersey Superior Court has held that "[w]hile 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.*" (Emphasis added.) Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super 534, 546 (March 2005). 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." (Emphasis added.) *Id.* at 549.

Further, in Bent v. Stafford Police Department, 381 N.J. Super 30, 37 (October 2005)⁵, the Superior Court references Mag in that the Court held that a requestor must specifically describe the document sought because OPRA operates to make identifiable government records "accessible." "As such, a proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents."⁶

In a recent Appellate Division decision, the court stated that OPRA identifies the responsibilities of the requestor and the agency relevant to the prompt access the law is designed to provide. Specifically, the court held that "[t]he requestor must pay the costs of reproduction and submit the request with information that is essential to permit the custodian to comply with its obligations." New Jersey Builders Association v. New Jersey Council on Affordable Housing, App.Div. (Decided January 24, 2007), page 12. Additionally, the court held that "[t]here is an obvious connection between the specificity of the request and a custodian's ability to provide a prompt reply." *Id.* at page 13. Further, the court held that "when a request is 'complex' because it fails to specifically identify the documents sought, then that request is not 'encompassed' by OPRA and OPRA's deadlines do not apply." *Id.* at page 15.

⁵ The Appellate decision affirms GRC Complaint No. 2004-78 (October 2004).

⁶ As stated in Bent.

In that case, the requestor submitted a five (5) page OPRA request listing thirty-eight (38) separate requests all of which include a request for "any and all documents and data." The court held that such a request substantially disrupted the agency's operations allowing the custodian to deny access after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency pursuant to N.J.S.A. 47:1A-5.g. Specifically, the court held that "[d]isruption may be inferred because a request like [the requestor's] necessitates work by [the custodian] that is neither assigned by the agency *nor envisioned by OPRA*." (Emphasis added.) *Id.* at page 19. Further, the court concluded that "the Legislature would not expect or want courts to require more persuasive proof of the substantiality of a disruption to agency operations than the agency's need to survey employees, identify information and generate new records and the requestor's need for more than ten business days to review what the agency provided." *Id.*

In the case at issue, the Custodian attempts to seek clarification from the Complainant in terms of the exact documents he is seeking, as the Complainant is requesting "all" documents. However, the Complainant does not provide any such clarification. In Liebel v. Manalapan Englishtown Regional Board of Education, GRC Complaint No. 2004-51 (September 2004), the Council held that:

"...[u]nder the circumstances, the Custodian reasonably sought clarification from the Complainant for a range of dates or bus numbers in order to fulfill the OPRA request... The Custodian, nonetheless, certifies that he never received a clarified OPRA request for the three (3) items in question from the Complainant. The Custodian is proper in requiring clarification when a request is too broad in scope and a reasonable basis exists to seek said clarification. The Custodian, therefore, is not responsible for fulfilling the April 1, 2004 OPRA request because it is too broad in scope and the Complainant has failed to clarify the request... OPRA provides that a Custodian "...shall have the burden of proving that a denial of access is authorized by law." N.J.S.A. 47:1A-6. The Custodian stated in his April 2, 2004 response to the Complainant's OPRA request that in order to fulfill the request it needed clarification. The Custodian additionally conveyed that a range of dates or bus numbers would suffice in helping to clarify the April 1, 2004 OPRA request. In stating specific reasons for the denial of access and offering alternatives that would clarify the request, the Custodian has met the burden of proving that the denial of access was proper under OPRA."

Additionally, in Moore v. Township of Old Bridge, GRC Complaint No. 2005-80 (August 2005), the Council held that "...the Custodian has met the burden of proving that the denial of access was proper under OPRA since she provided the Complainant with the specific reasons for her inability to fulfill the request and the Complainant provided no clarification..."

The facts are similar in this case, as the Custodian provided a written response to the Complainant within the statutorily required time frame identifying the reasons she could not fulfill the request (as it would disrupt agency operations pursuant to N.J.S.A. 47:1A-5.g.) and sought clarification from the Complainant. The Complainant, however, provided no clarification to the Custodian and refused the Custodian's offer of receiving some of the requested documents on a computer diskette.

Therefore, as the Custodian stated specific reasons for the denial of access and offered alternatives that would clarify the request, the Custodian has met the burden of proving that the denial of access was proper under OPRA pursuant to Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super 534, 546 (March 2005), Bent v. Stafford Police Department, 381 N.J. Super 30, 37 (October 2005)⁷, New Jersey Builders Association v. New Jersey Council on Affordable Housing, App.Div. (Decided January 24, 2007), Liebel v. Manalapan Englishtown Regional Board of Education, GRC Complaint No. 2004-51 (September 2004) and Moore v. Township of Old Bridge, GRC Complaint No. 2005-80 (August 2005).

Complainant's December 15, 2005 and December 19, 2005 OPRA requests

The Custodian certifies receiving the Complainant's requests on December 16, 2005 and December 20, 2005. The Complainant states that he did not receive a response from the Custodian regarding these two requests.

OPRA mandates that a Custodian must provide a written response to a request for records either granting or denying access within seven (7) business days from receipt of the request. N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. Additionally, N.J.S.A. 47:1A-5.i. provides that if a custodian fails to respond within the statutory time frame, the result is a "deemed" denial of the request.

In Caggiano v. Borough of Stanhope, GRC Complaint No. 2005-211 et seq. (January 2006),⁸ 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. N.J.S.A. 47:1A-5.g. requires that the Custodian must comply with a request or provide a lawful basis for denying access pursuant to N.J.S.A. 47:1A-6..." The fact that the Complainant had previously requested the same records and the Custodian had conditionally denied access is not a lawful reason to not respond to an additional request. OPRA does limit the amount of times a requestor may seek the same documents. The Custodian must properly respond to each request.

As the Custodian failed to provide the Complainant with a written response to his December 15, 2005 and December 19, 2005 requests within the statutorily mandated seven (7) business days, the Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. which resulted in a "deemed" denial of the requests.

⁷ The Appellate decision affirms GRC Complaint No. 2004-78 (October 2004).

⁸ Actual citation is 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.

Nonetheless, the Complainant's December 15, 2005 and December 19, 2005 requests were overbroad and would likely have substantially disrupted agency operations, pursuant to Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super 534, 546 (March 2005), Bent v. Stafford Police Department, 381 N.J. Super 30, 37 (October 2005)⁹ and New Jersey Builders Association v. New Jersey Council on Affordable Housing, App.Div. (Decided January 24, 2007), as the records requested in these requests were the same as the records requested in the Complainant's December 1, 2005 request.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

5. As OPRA did not become effective until 2002, the Complainant's June 9, 1999 request does not constitute a valid OPRA request. Therefore, the Council does not have the authority to adjudicate this portion of the complaint, and as such, this portion of the Complaint should be dismissed.
6. As the Custodian stated specific reasons for the denial of access and offered alternatives that would clarify the request, the Custodian has met the burden of proving that the denial of access was proper under OPRA pursuant to Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super 534, 546 (March 2005), Bent v. Stafford Police Department, 381 N.J. Super 30, 37 (October 2005)¹⁰, New Jersey Builders Association v. New Jersey Council on Affordable Housing, App.Div. (Decided January 24, 2007), Liebel v. Manalapan Englishtown Regional Board of Education, GRC Complaint No. 2004-51 (September 2004) and Moore v. Township of Old Bridge, GRC Complaint No. 2005-80 (August 2005).
7. As the Custodian failed to provide the Complainant with a written response to his December 15, 2005 and December 19, 2005 requests within the statutorily mandated seven (7) business days, the Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. which resulted in a "deemed" denial of the requests.
8. The Complainant's December 15, 2005 and December 19, 2005 requests were overbroad and would likely have substantially disrupted agency operations, pursuant to Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super 534, 546 (March 2005), Bent v. Stafford Police Department, 381 N.J. Super 30, 37 (October 2005)¹¹ and New Jersey Builders Association v. New Jersey Council on Affordable

⁹ The Appellate decision affirms GRC Complaint No. 2004-78 (October 2004).

¹⁰ The Appellate decision affirms GRC Complaint No. 2004-78 (October 2004).

¹¹ The Appellate decision affirms GRC Complaint No. 2004-78 (October 2004).

Housing, App.Div. (Decided January 24, 2007), as the records requested in these requests were the same as the records requested in the Complainant's December 1, 2005 request.

Prepared By:

Dara Lownie
Case Manager

Approved By:

Catherine Starghill, Esq.
Executive Director

February 21, 2005