



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

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

CHARLES A. RICHMAN  
Acting Commissioner

**FINAL DECISION**

**May 26, 2015 Government Records Council Meeting**

Jeff Carter  
Complainant  
v.

Complaint No. 2012-05

Franklin Fire District No. 2 (Somerset)  
Custodian of Record

At the May 26, 2015 public meeting, the Government Records Council (“Council”) considered the May 19, 2015 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The original Custodian complied with the Council’s March 31, 2015, Interim Order because he responded in the extended time frame by submitting additional facts (in the form of a Statement of Information) and simultaneously providing certified confirmation of compliance to the Executive Director.
2. Having received additional facts from the original Custodian, the Complainant’s December 18, 2011, request is invalid on the basis that it did not include enough identifiers necessary to allow the original Custodian to perform a sufficient search for all relevant records. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
3. Having reached the conclusion that the Complainant’s request was invalid, the Council should re-adopt its June 26, 2012, Final Decision determinations that there was no knowing and willful violation and that the Complainant is not a prevailing party entitled to an award of attorney’s fees.

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 26<sup>th</sup> Day of May, 2015

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: May 28, 2015**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
May 26, 2015 Council Meeting**

**Jeff Carter<sup>1</sup>  
Complainant**

**GRC Complaint No. 2012-05**

v.

**Franklin Fire District No. 2 (Somerset)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Copies of all Purchase Orders, Vouchers, Purchase Order Vouchers, and Warrants, including invoices and attachments for each record. Contained within the records is financial software used by Franklin Fire District No. 2 (“FFD”) to process its monetary disbursements, including any reasonably construed variation thereof. The date or dates of purchase is unknown and the name or names of the vendor or vendors is unknown.

**Custodian of Record:** Pelham Stewart<sup>3</sup>

**Request Received by Custodian:** December 18, 2011

**Response Made by Custodian:** None

**GRC Complaint Received:** January 9, 2012

**Background**

**March 31, 2015 Council Meeting:**

At its March 31, 2015, public meeting, the Council considered the March 24, 2015, Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. Based on the Council’s request for remand, the current Custodian must provide additional facts regarding his ability to respond to the Complainant’s OPRA request. Further, the current Custodian may utilize the GRC’s Statement of Information [(“SOI”)] form because it will provide him an opportunity to present the most relevant facts necessary to complete the factual record. Additionally, although the Council previously held on whether the original Custodian knowingly and willfully violated OPRA and whether the Complainant was a prevailing party, these issues must be re-evaluated at the conclusion of post-remand adjudication.

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<sup>1</sup> Represented by Walter M. Luers, Esq., of the Law Offices of Walter M. Luers, LLC (Clinton, NJ).

<sup>2</sup> Represented by Dominic DiYanni, Esq., of Eric M. Bernstein & Associates, LLC (Warren, NJ). Previously represented by Eric M. Perkins, Esq. (Skillman, NJ).

<sup>3</sup> The original custodian of record was William Kleiber.

2. **The Custodian shall comply with item No. 1 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>4</sup> to the Executive Director.<sup>5</sup>**
3. The Council defers analysis of whether the original and/or current Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the current Custodian's compliance with the Council's Interim Order.
4. The Council defers analysis of whether the Complainant is a prevailing party pending the current Custodian's compliance with the Council's Interim Order.

Procedural History:

On April 1, 2015, the Council distributed its Interim Order to all parties. On April 7, 2015, the Custodian's Counsel requested an extension of ten (10) business days to respond to the Council's Order based on several factors.

On the same day, the Complainant's Counsel responded via e-mail objecting to the extension. The Complainant's Counsel noted that the FFD continuously failed to participate in this complaint in its three (3) plus year pendency: these actions represent an abuse of the process conducted in bad faith.

Later on April 7, 2015, the GRC responded stating that it reviewed both parties submissions and determined that although it was agreeable to granting an extension, ten (10) business days was unreasonable given the facts of this complaint. The GRC thus granted an extension until April 16, 2015 and noted that no further extensions would be granted.

On April 16, 2015, the original Custodian responded to the Council's Interim Order by providing a completed Statement of Information ("SOI"). Therein, the original Custodian certified that the FFD received the Complainant's OPRA request on December 19, 2011. The original Custodian affirmed that he did not conduct a search because the Complainant failed to identify an individual or entity to which the records pertained. The original Custodian certified that he forwarded the request to original Counsel at the time but that the FFD appeared to have not responded to same thereafter. The original Custodian averred that, at the time, he believed the request would be denied as invalid. The original Custodian asserted that the Complainant identified specific types of records (purchase orders, vouchers, *etc.*), but failed to include a date or range of dates, clear subject matter, and identifiable parties. The original Custodian also

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<sup>4</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

<sup>5</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

argued that original Counsel agreed that the request was invalid; thus, the request was effectively denied when the FFD did not respond.

The original Custodian asserted that the Complainant is well-versed in OPRA and could have easily identified or obtained information necessary to ensure the subject OPRA request was valid. However, the Complainant instead submitted an overly broad request and expected the FFD to research its records, which is not required under OPRA. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007). The original Custodian asserted that the Council's decision in this matter was appropriate but that the FFD would attempt to comply with a new OPRA request by providing more identifiers.

On April 24, 2015, the Complainant's Counsel submitted a letter brief and attached his Appellate Division brief. The Complainant's Counsel argued that the Council already determined that the Custodian failed to respond timely to the subject OPRA request and had no issue identifying the types of records sought. However, the Council infringed on the Complainant's due process rights by unilaterally determining *sua sponte* that the request was invalid absent the Custodian's failure to respond to the request or the complaint. The Complainant's Counsel asserted that the Council's decision provided the Custodian with a convenient defense, notwithstanding his continued failure to respond.

The Complainant's Counsel also argued that Council rendered its decision in direct opposition to its regulations at N.J.A.C. 5:105-2.1(h)(providing for the Council's ability to raise defenses *sua sponte* in order to advance the "interest of furthering the provisions and intent of" OPRA); Hyman v. City of Jersey City & GRC, 2012 N.J. Super. Unpub. LEXIS 2032 (App. Div. 2012); Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012). The Complainant's Counsel contended that the Council's decision set a chilling new precedent that the GRC will assume an unresponsive custodian's legal burden at the expense of the complainant. The Complainant's Counsel also argued that the Council's *sua sponte* defense, in light of the FFD's silence in the matter, was also contrary to the Supreme Court's precedent that an agency must respond to an OPRA request within seven (7) business days instead of sitting silent once same is made. Mason v. City of Hoboken, 196 N.J. 51 (July 22, 2008).

The Complainant's Counsel argued that it was not surprising that the original Custodian adopted the Council's *sua sponte* decision. However, the Complainant's Counsel argued that the original Custodian's denial is contrary to the fact that he did not perform a search, which case law required him to do if he did not intend to seek clarification of the request before denying access. Branin v Borough of Collingswood, 2012 N.J. Super. Unpub. LEXIS 1938, 1 (App. Div. 2012)(*certify. denied*, 213 N.J. 45 (2013)).

Additionally, the Complainant's Counsel argued that the Council used prior precedent in Burke, 429 N.J. Super. 169, to seek a remand of Rivera v. City of Newark (Essex), Docket No. A-5001-11T4.<sup>6</sup> The Complainant's Counsel contended that the Council should have similarly

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<sup>6</sup> On appeal from Rivera v. City of Newark (Essex), GRC Complaint No. 2010-274 (Final Decision dated April 25, 2012).

remanded this case and reversed its decision, just as it did in Rivera. The Complainant's Counsel argued that the Council instead denied the Complainant's request for reconsideration and confirmed its flawed decision despite its knowledge of Burke, 429 N.J. Super. 169. *See also* Doss v. Borough of Paramus (Bergen), GRC Complaint No. 2014-149 (Interim Order dated February 24, 2015) *citing* Burke (holding that a request for financial disclosure statements from two (2) specific employees was valid). The Complainant's Counsel noted that the decision in Rivera, GRC 2010-274 is similar to the Council's holding in Darata v. Monmouth Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2009-312 (May 2011). The Complainant's Counsel noted that the Complainant raised the Darata precedent in his request for reconsideration, but the Council ignored this argument in denying same.

The Complainant's Counsel noted that the Council recently decided that an OPRA request was valid notwithstanding the inclusion of a time frame. The Complainant's Counsel argued that despite the fact that the Complainant's request was narrower than those requests in Burke and Rivera, the Council arbitrarily and capriciously *sua sponte* determined that the request was invalid. The Complainant's Counsel further argued that, notwithstanding all case law to the contrary, the Council denied the Complainant's reconsideration.

The Complainant's Counsel reiterated that the Council erroneously determined that the Complainant's OPRA request was invalid *sua sponte* without any participation from the FFD until it responded to the March 31, 2015, Interim Order. The Complainant's Counsel argued that, notwithstanding the FFD's failure to respond throughout the process, the original Custodian predictably and conveniently adopted the Council's defense. The Complainant's Counsel contended that the FFD created a problematic atmosphere by defaulting, and the Council advanced that atmosphere by determining the OPRA request was invalid. The Complainant's Counsel also noted that the original Custodian was in the proper position as FFD Treasurer to seek out purchase records associated with what was later identified as QuickBooks financial software. *See* Complainant's Appellate Brief, 16-19.

The Complainant's Counsel argued that, if left uncorrected, the Council's precedent here will chill requestors by: 1) allowing for custodians to deny access under OPRA by failing to respond at all; 2) allowing custodians to default during the Council's adjudication; 3) allowing the Council to create a *sua sponte* defense for defaulting custodians; and 4) denying ensuing requests for reconsideration with no analysis. The Complainant's Counsel thus contended that the Council's decision warrants a reversal by validation of the Complainant's OPRA request and an order requiring disclosure of all records to the Complainant.

## Analysis

### Compliance

At its March 31, 2015, meeting, the Council ordered the current Custodian to provide additional facts regarding his ability to respond to the Complainant's OPRA request, possibly in the form an SOI, and to submit certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director. On April 1, 2015, the Council distributed its Interim

Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on April 9, 2015.

On April 7, 2015, the third (3<sup>rd</sup>) business day after receipt of the Council's Order, the Custodian's Counsel sought an extension of ten (10) business days to respond. The Complainant's Counsel objected to the extension, noting that the FFD had failed to respond throughout the pendency of this complaint. Based on both arguments, the GRC allowed for a five (5) business day extension, or until April 16, 2015. On the last day of the extended time frame, the original Custodian submitted an SOI.

The GRC notes that the Council's Order directed the current Custodian to submit compliance; however, the original Custodian was in the best position to provide a certified response as to the events that occurred prior to the filing of this complaint. For this reason, the GRC is satisfied that the FFD adequately complied with the Council's Order.

Therefore, the original Custodian complied with the Council's March 31, 2015, Interim Order because he responded in the extended time frame by submitting additional facts (in the form of an SOI) and simultaneously providing certified confirmation of compliance to the Executive Director.

### **Validity of 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. 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.

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, 375 N.J. Super. at 546 (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.” Id. at 549 (emphasis added). Bent, 381 N.J. Super. at 37 (App. Div. 2005);<sup>7</sup> NJ Builders, 390 N.J. Super. at 180 (App. Div. 2007); Schuler, GRC Complaint No. 2007-151 (February 2009).

The crux of this complaint, on remand from the Appellate Division, can easily be broken down into two (2) main issues: 1) whether the request as originally stated was invalid; and 2) whether the Council appropriately applied its ability to initially raise the invalid request defense *sua sponte*, notwithstanding the FFD’s failure to respond, submit an SOI, or participate in the subsequent appellate proceedings.

Regarding the first issue, the Council determined that the request was invalid on its face due to lack of a time frame and failure to identify vendors. Thereafter, the Complainant and Counsel have rigorously argued throughout the pendency of this complaint that the subject OPRA request was valid. Their arguments included a number of court and GRC decisions where requests were determined to be valid even though they did not include a time frame. *See* Burke, 429 N.J. Super. 169; Branin, 2010 N.J. Super. Unpub. LEXIS 1938; Darata, GRC 2009-312; Rivera, GRC 2010-274; Doss, GRC 2014-149.

The GRC notes that it analyzes the validity of an OPRA request on a case by case basis, weighing factors such as the nature of the request, inclusion of identifying factors, and whether a custodian was able to identify responsive records regardless a lack of specificity. *See* Bond v. Borough of Washington (Warren), GRC Complaint No. 2009-324 (Final Decision dated March 29, 2011). To this end, and notwithstanding the FFD’s failure to submit an SOI, the GRC analyzed the subject request and determined that it was invalid because it failed to include a time frame and vendor information.

First, in reviewing the facts of the multiple cases cited by Complainant’s Counsel in his April 24, 2015, submission, each request was determined to be valid for reasons that did not exist in this complaint. As an example, in Burke, 429 N.J. Super. 169, the Court determined that the plaintiff’s OPRA request, which did not include a time frame, was valid partly because defendants performed a search and located records. *See also* Gannett N.J. Partners, LP v. County of Middlesex, 379 N.J. Super. 205, 212-213 (App. Div. 2005)(stating that an agency could not argue that a request was invalid after already identifying records and providing or denying access accordingly). In Branin, 2010 N.J. Super. Unpub. LEXIS 1938; Darata, GRC 2009-312, Rivera, GRC 2010-274, and Doss, GRC 2014-149, the requests cited to specific litigation to which the

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<sup>7</sup> Affirming Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).



public agencies were a party. The inclusion of this detail allowed the agencies to identify a time period by applying the inception and conclusion of the identified manner. Additionally, the Council's decision in Darata, GRC 2009-312, fell squarely within Gannett, based on the custodian's ability to identify records. The request at issue does not mirror the facts of those cases.

Second, as noted in its June 26, 2012, Final Decision, the request identifies types of records. However, the Complainant plainly advanced that he did not know the time frame or vendors in his original request. The GRC notes that this admittance appears to be contrary to the evidence relied upon by the Complainant's Counsel in his Appellate Brief and April 24, 2015, submission. Specifically, he argued in his April 24, 2015, letter brief that the Complainant did not know that FFD was utilizing QuickBooks until after submission of the December 18, 2011, request (*citing* Complainant's Appellate Brief Pb 16-19). In that brief, the Complainant states that his knowledge of FFD's use of QuickBooks came from the Custodian's SOI certification in a separate complaint, Carter v. Franklin Fire Dist. No. 2 (Somerset), GRC Complaint No. 2011-141 (Interim Order dated June 26, 2012). The Custodian submitted his SOI in Carter, GRC 2011-141, on June 9, 2011, approximately six (6) months before the Complainant submitted the request at issue here. Further, as part of a certification submitted in Carter, the Complainant acknowledged that he was aware of this fact based on the SOI in a submission to the March 9, 2012.

Third, the additional facts indicate that the FFD did not perform a search. Although the Complainant cites to Branin and argues that the Custodian was required to perform a search if he did not intend to seek clarification, the Court's holding in Branin was predicated on the fact that defendants had already performed a fruitless search for records determined to be easily identifiable. Further, the Branin Court does not hold or even imply that a custodian is always required to seek clarification prior to denying an OPRA request as overly broad. Here, the request did identify certain records but did not adequately provide enough identifiers allowing the Custodian to sufficiently identify responsive records. As noted by the Council in its June 26, 2012, Final Decision, the only reasonable way the Custodian could have complied with this request was by either disclosing every purchase order, voucher, purchase order voucher, and warrant (including invoices and attachments where applicable) in the FFD's possession or researching each and every one of those records to determine whether they referred to "financial software." This is certainly the embodiment of a blanket request that the MAG Court reasoned against. Id. at 549.

Regarding the second issue, the GRC's regulations at N.J.A.C. 5:105-2.1(h) allows it to raise issues or defenses *sua sponte*. See also Paff v. Twp. of Plainsboro, 2007 N.J. Super. Unpub. LEXIS 2135 (App. Div. 2007)(*certif. denied* by Paff v. Twp. of Plainsboro, 193 N.J. 292 (2007)).<sup>8</sup> As noted by the Complainant's Counsel, this regulation includes a caveat that the issues or defenses must be in the interest of furthering the provisions and intent of OPRA. Thus, it rests on the GRC, as the adjudicator, to interpret justly whether a request is valid, regardless of whether a custodian responds or not. It should be noted that the GRC's regulations also address situations in which a custodian fails to submit an SOI. N.J.A.C. 5:105-2.4(g)(a custodian's failure to submit an SOI "*may* result" in a decision in favor of a complainant (emphasis added)).

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<sup>8</sup> On appeal from Paff v. Twp. of Plainsboro, GRC Complaint No. 2005-29 (March 2006).

However, the GRC is satisfied that it properly exercised its right here. First, a custodian's failure to provide an SOI does not automatically require that the GRC must hold in favor of the complainant. The ability for the GRC to raise defenses *sua sponte* defense "is well established." Paff, 2007 N.J. Super. Unpub. at 5-6. In this complaint, the GRC appropriately applied relevant case law in determining that the request was invalid. Such an action was well within its right in furthering the interests and intent of OPRA as it pertains to invalid OPRA requests.

The Complainant's Counsel argued that the Council's determination infringed on the Complainant's due process right and set a chilling precedent. However, the Complainant actively exercised his due process right here through submissions, a request for reconsideration, an appeal and a remand. Further, no precedent has been set here because the validity of OPRA requests are reviewed on a case-by-case basis. By way of example, the Council *sua sponte* reviewed the request at issue in Verry v. Borough of South Bound (Somerset), GRC Complaint No. 2012-143 (Interim Order dated May 28, 2013), because the custodian failed to provide an SOI. Therein, the Council determined that a portion of the request was invalid; however, the remainder of the request was not, and disclosure was ordered. The Council's decision in Verry, GRC 2012-143, affirms not only the fact-specific nature of invalid request determinations but also the Council's appropriate utilization of *sua sponte* determinations without setting a unilateral precedent.

Having received additional facts from the original Custodian, the Complainant's December 18, 2011, request is invalid on the basis that it did not include enough identifiers necessary to allow the original Custodian to perform a sufficient search for all relevant records. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37 (App. Div. 2005); NJ Builders, 390 N.J. Super. at 180 (App. Div. 2007); Schuler, GRC 2007-151.

Finally, having reached the conclusion that the Complainant's request was invalid, the Council should re-adopt its June 26, 2012, Final Decision determinations that there was no knowing and willful violation and that the Complainant is not a prevailing party entitled to an award of attorney's fees.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The original Custodian complied with the Council's March 31, 2015, Interim Order because he responded in the extended time frame by submitting additional facts (in the form of a Statement of Information) and simultaneously providing certified confirmation of compliance to the Executive Director.
2. Having received additional facts from the original Custodian, the Complainant's December 18, 2011, request is invalid on the basis that it did not include enough identifiers necessary to allow the original Custodian to perform a sufficient search for all relevant records. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166,

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

3. Having reached the conclusion that the Complainant's request was invalid, the Council should re-adopt its June 26, 2012, Final Decision determinations that there was no knowing and willful violation and that the Complainant is not a prevailing party entitled to an award of attorney's fees.

Prepared By: Frank F. Caruso  
Communications Specialist/Resource Manager

Reviewed By: Joseph D. Glover  
Executive Director

May 19, 2015



State of New Jersey  
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

RICHARD E. CONSTABLE, III  
Commissioner

INTERIM ORDER

March 31, 2015 Government Records Council Meeting

Jeff Carter  
Complainant

Complaint No. 2012-05

v.

Franklin Fire District No. 2 (Somerset)  
Custodian of Record

At the March 31, 2015 public meeting, the Government Records Council ("Council") considered the March 24, 2015 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. Based on the Council's request for remand, the current Custodian must provide additional facts regarding his ability to respond to the Complainant's OPRA request. Further, the current Custodian may utilize the GRC's Statement of Information form because it will provide him an opportunity to present the most relevant facts necessary to complete the factual record. Additionally, although the Council previously held on whether the original Custodian knowingly and willfully violated OPRA and whether the Complainant was a prevailing party, these issues must be re-evaluated at the conclusion of post-remand adjudication.
2. **The Custodian shall comply with item No. 1 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>1</sup> to the Executive Director.<sup>2</sup>**
3. The Council defers analysis of whether the original and/or current Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the current Custodian's compliance with the Council's Interim Order.

<sup>1</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

<sup>2</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

4. The Council defers analysis of whether the Complainant is a prevailing party pending the current Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the  
Government Records Council  
On The 31<sup>st</sup> Day of March, 2015

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: April 1, 2015**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
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Complainant**

**GRC Complaint No. 2012-05**

v.

**Franklin Fire District No. 2 (Somerset)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Copies of all Purchase Orders, Vouchers, Purchase Order Vouchers, and Warrants, including invoices and attachments for each record. Contained within the records is financial software used by Franklin Fire District No. 2 (“FFD”) to process its monetary disbursements, including any reasonably construed variation thereof. The date or dates of purchase is unknown and the name or names of the vendor or vendors is unknown.

**Custodian of Record:** Pelham Stewart<sup>3</sup>  
**Request Received by Custodian:** December 18, 2011  
**Response Made by Custodian:** None  
**GRC Complaint Received:** January 9, 2012

**Background**

**July 23, 2013 Council Meeting:**

At its July 23, 2013 public meeting, the Council considered the July 16, 2013 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted said findings and recommendations. The Council, therefore, found that:

[T]he Complainant has failed to establish in his request for reconsideration of the Council’s June 26, 2012 Final Decision that: 1) the Council's decision is based upon a “palpably incorrect or irrational basis;” or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Thus, the Complainant failed to support his claim that reconsideration should be granted based on mistake and his request for reconsideration should be denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch.

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<sup>1</sup> Represented by Walter M. Luers, Esq., of the Law Offices of Walter M. Luers, LLC (Clinton, NJ).

<sup>2</sup> No legal representation listed on record.

<sup>3</sup> The original custodian of record was William Kleiber.

Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

#### Procedural History:

On July 26, 2013, the Council distributed its Final Decision to all parties.

On August 23, 2013, the Complainant filed a Notice of Appeal to the Superior Court of New Jersey, Appellate Division. On October 6, 2014, the Council requested remand of this complaint from the Appellate Division in order to obtain additional facts from the FFD to render a final decision based on a more complete record. The Council's remand request stated that the Custodian failed to submit a Statement of Information ("SOI") and further noted that the FFD failed to file a brief with the Appellate Division. On October 27, 2014, the Appellate Division granted the Council's request for remand.

#### Analysis

##### Request for Additional Facts

The Council requested remand of this complaint to obtain additional information as to the Custodians' ability to respond to the Complainant's OPRA request. Specifically, the GRC previously determined that the OPRA request was invalid based on a limited factual record because the original Custodian failed to submit an SOI and the FFD failed to file a brief. For these reasons, the GRC must obtain more facts required to be initially submitted as part of the SOI. These facts may include the date of receipt, date of response, the search conducted to locate records, those records located, and the custodian's legal arguments on either the validity of the request or applicable exemptions, as necessary.

Therefore, based on the Council's request for remand, the current Custodian must provide additional facts regarding his ability to respond to the Complainant's OPRA request. Further, the current Custodian may utilize the GRC's SOI form because it will provide him an opportunity to present the most relevant facts necessary to complete the factual record. Additionally, although the Council previously held on whether the original Custodian knowingly and willfully violated OPRA and whether the Complainant was a prevailing party, these issues must be re-evaluated at the conclusion of post-remand adjudication.

##### Knowing & Willful

The Council defers analysis of whether the original and/or current Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the current Custodian's compliance with the Council's Interim Order.

### Prevailing Party Attorney's Fees

The Council defers analysis of whether the Complainant is a prevailing party pending the current Custodian's compliance with the Council's Interim Order.

### Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Based on the Council's request for remand, the current Custodian must provide additional facts regarding his ability to respond to the Complainant's OPRA request. Further, the current Custodian may utilize the GRC's Statement of Information form because it will provide him an opportunity to present the most relevant facts necessary to complete the factual record. Additionally, although the Council previously held on whether the original Custodian knowingly and willfully violated OPRA and whether the Complainant was a prevailing party, these issues must be re-evaluated at the conclusion of post-remand adjudication.
2. **The Custodian shall comply with item No. 1 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>4</sup> to the Executive Director.<sup>5</sup>**
3. The Council defers analysis of whether the original and/or current Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the current Custodian's compliance with the Council's Interim Order.
4. The Council defers analysis of whether the Complainant is a prevailing party pending the current Custodian's compliance with the Council's Interim Order.

Prepared By: Frank F. Caruso  
Communications Specialist/Resource Manager

Approved By: Dawn R. SanFilippo  
Deputy Executive Director

March 24, 2015

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<sup>4</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

<sup>5</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.





State of New Jersey  
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

RICHARD E. CONSTABLE, III  
Commissioner

**FINAL DECISION**

**July 23, 2013 Government Records Council Meeting**

Jeff Carter  
Complainant

Complaint No. 2012-05

v.

Franklin Fire District #2 (Somerset)  
Custodian of Record

At the July 23, 2013 public meeting, the Government Records Council (“Council”) considered the July 16, 2013 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that the Complainant has failed to establish in his request for reconsideration of the Council’s June 26, 2012 Final Decision that: 1) the Council's decision is based upon a “palpably incorrect or irrational basis;” or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Thus, the Complainant failed to support his claim that reconsideration should be granted based on mistake and his request for reconsideration should be denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

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 23rd Day of July, 2013



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: July 26, 2013**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

***Reconsideration***  
**Supplemental Findings and Recommendations of the Executive Director**  
**July 23, 2013 Council Meeting**

**Jeff Carter<sup>1</sup>**  
**Complainant**

**GRC Complaint No. 2012-05**

v.

**Franklin Fire District #2 (Somerset)<sup>2</sup>**  
**Custodian of Records**

**Records Relevant to Complaint:** Copies of all Purchase Orders, Vouchers, Purchase Order Vouchers, and Warrants, including invoices and attachments for each record. Contained within the records is financial software used by Franklin Fire District #2 (“District”) to process its monetary disbursements, including any reasonably construed variation thereof. The date or dates of purchase is unknown and the name or names of the vendor or vendors is unknown.

**Request Made:** December 18, 2011

**Response Made:** No response

**Custodian:** William Kleiber, Administrator

**GRC Complaint Filed:** January 9, 2012<sup>3</sup>

**Background**

June 26, 2012 Council Meeting:

At its June 26, 2012 public meeting, the Council considered the June 19, 2012 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, found that:

1. The Custodian’s failure to respond in writing to the Complainant’s OPRA request for warrants, either granting access, denying access, seeking clarification or properly requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s requests for said records pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007). Further, the Custodian violated N.J.S.A. 47:1A-5.e. by failing to provide immediate access to the

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<sup>1</sup> Represented by Walter M. Luers, Esq. (Clinton, NJ).

<sup>2</sup> No legal representation listed on record.

<sup>3</sup> The GRC received the Denial of Access Complaint on said date.

purchase orders, vouchers and purchase order vouchers pursuant to Herron v. Township of Montclair, GRC Complaint No. 2006-178 (February 2007).

2. The Complainant's OPRA request is overly broad and failed to specifically identify the records sought, and because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian has no legal duty to conduct research to locate records potentially responsive to the Complainant's request pursuant to the Superior Court's decisions in MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007).<sup>4</sup>
3. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the Custodian's conduct. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), no factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Specifically, the Complainant's request is invalid under OPRA because it is overly broad and failed to specifically identify a government record. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters, *supra*, and Mason, *supra*.

#### Procedural History:

On June 28, 2012, the Council sent its Final Decision to all parties.

#### Complainant's Reconsideration:

On July 13, 2012, the Complainant filed a request for reconsideration requesting that the Council reconsider its June 26, 2012 Final Decision based on a mistake.

### Analysis

#### Reconsideration

Parties may file a request for a reconsideration of any decision rendered by the Council within ten (10) business days following receipt of a Council decision. *N.J.A.C. 5:105-2.10*. Requests must be in writing, delivered to the Council and served on all parties. Parties must file any objection to the request for reconsideration within ten (10) business days following receipt of the request. The Council will provide all parties with written notification of its determination regarding the request for reconsideration. *N.J.A.C. 5:105-2.10(a) – (e)*.

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<sup>4</sup> Duplicate second sentence in the June 26, 2012 Order deleted.

Applicable case law holds that:

“[a] party should not seek reconsideration merely based upon dissatisfaction with a decision.” D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a "palpably incorrect or irrational basis;" or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. *E.g.*, Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the court acted in an arbitrary, capricious or unreasonable manner. D'Atria, supra, 242 N.J. Super. at 401. ‘Although it is an overstatement to say that a decision is not arbitrary, capricious, or unreasonable whenever a court can review the reasons stated for the decision without a loud guffaw or involuntary gasp, it is not much of an overstatement.’ *Ibid.*” In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

In the matter before the Council, the Complainant filed the request for reconsideration of the Council’s June 26, 2012 Final Decision on July 13, 2012, ten (10) business days from the issuance of the Council’s Order. The Complainant filed the request for reconsideration based on a mistake.

As the moving party, the Complainant was required to establish either of the necessary criteria set forth above: 1) that the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. *See Cummings, supra*. The Complainant failed to do so. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. *See D'Atria, supra*. Thus, the Complainant failed to support his claim that reconsideration should be granted based on mistake and his request for reconsideration should be denied. Cummings, supra; D'Atria, supra; Comcast, supra.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Complainant has failed to establish in his request for reconsideration of the Council’s June 26, 2012 Final Decision that: 1) the Council's decision is based upon a “palpably incorrect or irrational basis;” or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Thus, the Complainant failed to support his claim that reconsideration should be granted based on mistake and his request for reconsideration should be denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television

System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

Prepared By: John E. Stewart, Esq.

Approved By: Brandon D. Minde, Esq.  
Executive Director

July 16, 2013



State of New Jersey  
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

RICHARD E. CONSTABLE, III  
Commissioner

FINAL DECISION

June 26, 2012 Government Records Council Meeting

Jeff Carter  
Complainant

Complaint No. 2012-05

v.

Franklin Fire District #2 (Somerset)  
Custodian of Record

At the June 26, 2012 public meeting, the Government Records Council (“Council”) considered the June 19, 2012 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 Custodian’s failure to respond in writing to the Complainant’s OPRA request for warrants, either granting access, denying access, seeking clarification or properly requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s requests for said records pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007). Further, the Custodian violated N.J.S.A. 47:1A-5.e. by failing to provide immediate access to the purchase orders, vouchers and purchase order vouchers pursuant to Herron v. Township of Montclair, GRC Complaint No. 2006-178 (February 2007).
2. The Complainant’s OPRA request is overly broad and failed to specifically identify the records sought, and because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian would have no legal duty to conduct research to locate records potentially responsive to the Complainant’s request pursuant to the Superior Court’s decisions in the Complainant’s OPRA request is overly broad and failed to specifically identify the records sought, and because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian has no legal duty to conduct research to locate records potentially responsive to the Complainant’s request pursuant to the Superior Court’s decisions in MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007).
3. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Complainant has not achieved the desired result because the complaint did not bring about a



change (voluntary or otherwise) in the Custodian's conduct. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), no factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Specifically, the Complainant's request is invalid under OPRA because it is overly broad and failed to specifically identify a government record. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters, supra, and Mason, supra.

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 26<sup>th</sup> Day of June, 2012

Steven F. Ritardi, Esq., Acting Chair  
Government Records Council

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

Denise Parkinson Vetti, Secretary  
Government Records Council

**Decision Distribution Date: June 28, 2012**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
June 26, 2012 Council Meeting**

**Jeff Carter<sup>1</sup>  
Complainant**

**GRC Complaint No. 2012-05**

v.

**Franklin Fire District #2 (Somerset)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Copies of all Purchase Orders, Vouchers, Purchase Order Vouchers, and Warrants, including invoices and attachments for each record. Contained within the records is financial software used by Franklin Fire District #2 (“District”) to process its monetary disbursements, including any reasonably construed variation thereof. The date or dates of purchase is unknown and the name or names of the vendor or vendors is unknown.

**Request Made:** December 18, 2011

**Response Made:** No response

**Custodian:** William Kleiber, Administrator

**GRC Complaint Filed:** January 9, 2012<sup>3</sup>

**Background**

**December 18, 2011**

Complainant’s Open Public Records Act (“OPRA”) request. The Complainant requests the records relevant to this complaint listed above in an e-mail referencing OPRA. The Complainant indicates that the preferred method of delivery is via e-mail or, if the records cannot be delivered electronically, via facsimile.

**January 9, 2012**

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

- Complainant’s OPRA request dated December 18, 2011
- Facsimile transmission verification report dated December 18, 2011

The Complainant states that he provided his OPRA request to the Custodian by e-mailing it to the District’s administrative assistant, Sandy Accardi, and by faxing it to the District’s office on December 18, 2011. The Complainant further states that the

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<sup>1</sup> Represented by Walter M. Luers, Esq. (Clinton, NJ); however, there are no submissions from the Custodian’s Counsel to the GRC on file.

<sup>2</sup> No legal representation listed on record.

<sup>3</sup> The GRC received the Denial of Access Complaint on said date.

Custodian failed to respond to his OPRA request. The Complainant states that by failing to respond to his OPRA request the Custodian has consciously, intentionally, deliberately, and unreasonably denied him access to the requested records. The Complainant requests the following relief:

- A finding that there was a “deemed denial” of the Complainant’s OPRA request.
- A finding that the Custodian knowingly and willfully violated OPRA and unreasonably denied the Complainant access to the requested records under the totality of the circumstances.
- An Order directing the Custodian to immediately disclose the records responsive to the Complainant’s request.
- A finding that the Complainant is the prevailing party and an award of reasonable attorney fees pursuant to N.J.S.A. 47:1A-6.

The Complainant does not agree to mediate this complaint.

**January 10, 2012**

Request for the Statement of Information (“SOI”) sent to the Custodian.<sup>4</sup>

**January 10, 2012**

E-mail to the Complainant’s Counsel. The GRC forwards a copy of the request for the SOI to Counsel and asks Counsel to provide the GRC with an acknowledgment that Counsel represents the Complainant.<sup>5</sup>

**January 23, 2012**

Letter from GRC to the Custodian. The GRC sends a letter to the Custodian indicating that the GRC provided the Custodian with a request for an SOI on January 10, 2012 and to date has not received a response. Further, the GRC states that if the SOI is not submitted within three (3) business days, the GRC will adjudicate this complaint based solely on the information provided by the Complainant.

**January 25, 2012**

The Complainant acknowledges the GRC’s e-mail to the Complainant’s Counsel dated January 10, 2012, upon which the Complainant was copied, and requests to be copied on all correspondence. The Complainant states that he wants a copy of the Custodian’s SOI.

**Analysis**

**Whether the Custodian timely responded to the Complainant’s OPRA request?**

OPRA provides that:

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<sup>4</sup> The request for the SOI was sent to the Custodian via e-mail to the District’s administrative assistant and to the Custodian in care of the District’s mailing address via UPS Next Day Air®. UPS provided Proof of Delivery for delivery to the District’s address on January 11, 2012 at 9:08 a.m. The Custodian never replied to the GRC.

<sup>5</sup> Counsel did not reply to this e-mail.

“*[i]mmediate* access ordinarily shall be granted to budgets, *bills, vouchers*, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information.” (Emphasis added.) N.J.S.A. 47:1A-5.e.

OPRA also 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 ...” N.J.S.A. 47:1A-5.g.

OPRA further 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 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. As also prescribed under 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. Further, a custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5.g.<sup>6</sup> 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 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. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

Here, the record reveals that the Custodian failed and refused to respond to the Complainant’s OPRA request. The Custodian’s failure to provide a written response to the Complainant’s OPRA request for warrants within the statutorily mandated seven (7) business days resulted in a “deemed” denial of said records.

Moreover, vouchers and purchase orders are designated as immediate access records pursuant to N.J.S.A. 47:1A-5.e. In Herron v. Township of Montclair, GRC Complaint No. 2006-178 (February 2007), the GRC held that the “immediate access language of OPRA (N.J.S.A. 47:1A-5.e.) suggests that the Custodian was...obligated to

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<sup>6</sup> It is the GRC’s position that 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.

immediately notify the Complainant...” Inasmuch as OPRA requires a custodian to respond within a statutorily required time frame, when immediate access records are requested, a custodian must respond to the request for those records immediately, granting or denying access, requesting additional time to respond or requesting clarification of the request.

In the instant complaint, the Complainant requested copies of all purchase orders, vouchers and purchase order vouchers, which are immediate access records and the Custodian therefore had an obligation under OPRA to respond to the request for those records immediately.

Accordingly, the Custodian’s failure to respond in writing to the Complainant’s OPRA request for warrants, either granting access, denying access, seeking clarification or properly requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s requests for said records pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley, supra. Further, the Custodian violated N.J.S.A. 47:1A-5.e. by failing to provide immediate access to the purchase orders, vouchers and purchase order vouchers pursuant to Herron, supra.

#### **Whether the Custodian unlawfully denied access to the requested records?**

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:

“[i]mmediate access ordinarily shall be granted to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information.” (Emphasis added.) N.J.S.A. 47:1A-5.e.

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.

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.

The Complainant’s request sought vouchers and purchase orders, which are immediate access records pursuant to N.J.S.A. 47:1A-5.e.; however, the Complainant requested all purchase orders, vouchers, purchase order vouchers, and warrants, including invoices and attachments for each record but affirmatively stated that the dates of such records and the vendors for whom the purchase requisitions were prepared are unknown. Because the Complainant’s request is overly broad, the Custodian cannot be expected to identify with specificity any of 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 (App. Div. 2005). As the court noted in invalidating MAG’s request under OPRA:

“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.

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.*

In addition, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),<sup>7</sup> 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

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<sup>7</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

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.”<sup>8</sup>

Moreover, in New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), the court enumerated the responsibilities of a custodian and a requestor as follows:

“OPRA identifies the responsibilities of the requestor and the agency relevant to the prompt access the law is designed to provide. The custodian, who is the person designated by the director of the agency, N.J.S.A. 47:1A-1.1, must adopt forms for requests, locate and redact documents, isolate exempt documents, assess fees and means of production, identify requests that require "extraordinary expenditure of time and effort" and warrant assessment of a "service charge," and, when unable to comply with a request, "indicate the specific basis." N.J.S.A. 47:1A-5(a)-(j). The 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. N.J.S.A. 47:1A-5(f), (g), (i). *Research is not among the custodian's responsibilities.*” (Emphasis added), NJ Builders, 390 N.J. Super. at 177.

Moreover, the court cited MAG by stating that “...when a request is ‘complex’ because it fails to specifically identify the documents sought, then that request is not ‘encompassed’ by OPRA...” The court also quoted N.J.S.A. 47:1A-5.g in that “[i]f 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.” The court further stated 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...generate new records...” Accordingly, the test under MAG then, is whether a requested record is a *specifically identifiable* government record.

Under such rationale, the GRC has repeatedly found that blanket requests are not valid OPRA requests. In the matter of Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009), the relevant part of the Complainant’s request sought:

2. Item No. 2: “From the Borough Engineer’s files: all engineering documents for all developments or modifications to Block 25, Lot 28; Block 25, Lot 18; Block 23, Lot 1; Block 23, Lot 1.02.
3. Item No. 3: From the Borough Engineer’s files: all engineering documents for all developments or modifications to North St., to the south and east of Wilson St.
4. Item No. 4: From the Borough Attorney’s files: all documents related to the development or modification to Block 25, Lot 28; Block 25, Lot 18; Block 23, Lot 1; Block 23, Lot 1.02.

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<sup>8</sup> As stated in Bent, *supra*.

5. Item No. 5: From the Borough Attorney's files: all documents related to the development or modification to North Street, to the south and east of Wilson St."

In reviewing the complainant's request, the Council found that "[b]ecause the Complainant's OPRA requests # 2-5 are not requests for identifiable government records, the requests are invalid and the Custodian has not unlawfully denied access to the requested records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005)."

This matter is substantially different from the facts presented in Burnett v. County of Gloucester, 415 N.J. Super. 506 (App. Div. 2010). In Burnett, the plaintiff appealed from an order of summary judgment entered against him in his suit to compel production by the County of Gloucester of documents requested pursuant to OPRA, consisting of "[a]ny and all *settlements, releases or similar documents* entered into, approved or accepted from 1/1/2006 to present." *Id.* at 508. (Emphasis added). The Appellate Division determined that the request sought a specific type of document, although it did not specify a particular case to which such document pertained, and was therefore not overly broad. *Id.* at 515-16.

In the instant complaint, although the Complainant did request a specific *type* of record, the Complainant's request can be distinguished from the request in Burnett, *supra*, because in Burnett the requestor bracketed the specific types of documents within a time frame that facilitated the custodian's search. Here, the Complainant candidly stated that he could neither provide dates nor vendors for the records he requested. Without such information, the only way the Custodian would be able to comply with the Complainant's request would be to disclose all records of the type requested within the agency's files. The courts have determined that such an all-encompassing request is not contemplated by OPRA.

The court in MAG, *supra*, held that "[u]nder OPRA, agencies are required to disclose only 'identifiable' government records not otherwise exempt..." *Id.* at 549. The court in Bent, *supra*, articulated the requestor's obligation to "...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." *Id.* at 37.

Therefore, the Complainant's OPRA request is overly broad and failed to specifically identify the records sought, and because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian would have no legal duty to conduct research to locate records potentially responsive to the Complainant's request pursuant to the Superior Court's decisions in MAG, *supra*, Bent, *supra*, and New Jersey Builders, *supra*.

**Whether the Complainant is a "prevailing party" pursuant to N.J.S.A. 47:1A-6 and entitled to reasonable attorney's fees?**

OPRA provides 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...; or
- in lieu of filing an action in Superior Court, file a complaint with the Government Records Council...

A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.” N.J.S.A. 47:1A-6.

In Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Court held that a complainant is a “prevailing party” if he/she achieves the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct. *Id.* at 432. Additionally, the Court held that attorney’s fees may be awarded when the requestor is successful (or partially successful) via a judicial decree, a quasi-judicial determination, or a settlement of the parties that indicates access was improperly denied and the requested records are disclosed. *Id.*

In Teeters, the complainant appealed from a final decision of the Government Records Council which denied an award for attorney's fees incurred in seeking access to certain public records via two complaints she filed under the OPRA, N.J.S.A. 47:1A-6 and N.J.S.A. 47:1A-7.f., against the Division of Youth and Family Services (“DYFS”). The records sought involved an adoption agency having falsely advertised that it was licensed in New Jersey. DYFS eventually determined that the adoption agency violated the licensing rules and reported the results of its investigation to the complainant. The complainant received the records she requested upon entering into a settlement with DYFS. The Court found that the complainant engaged in reasonable efforts to pursue her access rights to the records in question and sought attorney assistance only after her self-filed complaints and personal efforts were unavailing. *Id.* at 432. With that assistance, she achieved a favorable result that reflected an alteration of position and behavior on DYFS’s part. *Id.* As a result, the complainant was a prevailing party entitled to an award of a reasonable attorney's fee. Accordingly, the Court remanded the determination of reasonable attorney’s fees to the GRC for adjudication.

Additionally, the New Jersey Supreme Court has ruled on the issue of “prevailing party” attorney’s fees. In Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), the Court discussed the catalyst theory, “which posits that a plaintiff is a ‘prevailing party’ if it achieves the desired result because the lawsuit brought about a voluntary change in the defendant’s conduct.” Mason, *supra*, at 71, (quoting Buckhannon Board & Care Home v. West Virginia Department of Health & Human Resources, 532 U.S. 598, 131 S. Ct. 1835, 149 L. Ed. 2d 855 (2001)). In Buckhannon, the Supreme Court stated that the phrase “prevailing party” is a legal term of art that refers to a “party in whose favor a judgment is rendered.” (quoting Black’s Law Dictionary 1145 (7<sup>th</sup> ed. 1999)). The Supreme Court rejected the catalyst theory as a basis for prevailing party attorney fees, in part because “[i]t allows an award where there is no judicially sanctioned change in the legal relationship of the parties.” *Id.* at 605, 121 S. Ct. at 1840, 149 L. Ed. 2d at 863, but also over concern that the catalyst theory would



spawn extra litigation over attorney's fees. *Id.* at 609, 121 S. Ct. at 1843, 149 L. Ed. 2d at 866.

As the New Jersey Supreme Court noted in Mason, Buckhannon is binding only when counsel fee provisions under federal statutes are at issue. 196 N.J. at 72, *citing* Teeters, *supra*, 387 N.J. Super. at 429; *see, e.g.*, Baer v. Klagholz, 346 N.J. Super. 79 (App. Div. 2001)(applying Buckhannon to the federal Individuals with Disabilities Education Act), *certif. denied*, 174 N.J. 193 (2002). "But in interpreting New Jersey law, we look to state law precedent and the specific state statute before us. When appropriate, we depart from the reasoning of federal cases that interpret comparable federal statutes." 196 N.J. at 73 (citations omitted).

The Mason Court then examined the catalyst theory within the context of New Jersey law, stating that:

"New Jersey law has long recognized the catalyst theory. In 1984, this Court considered the term "prevailing party" within the meaning of the federal Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C.A. § 1988. Singer v. State, 95 N.J. 487, 495, *cert. denied*, New Jersey v. Singer, 469 U.S. 832, 105 S. Ct. 121, 83 L. Ed. 2d 64 (1984). The Court adopted a two-part test espousing the catalyst theory, consistent with federal law at the time: (1) there must be "a factual causal nexus between plaintiff's litigation and the relief ultimately achieved;" in other words, plaintiff's efforts must be a "necessary and important factor in obtaining the relief," *Id.* at 494-95, 472 A.2d 138 (internal quotations and citations omitted); and (2) "it must be shown that the relief ultimately secured by plaintiffs had a basis in law," *Id.* at 495. *See also* North Bergen Rex Transport v. TLC, 158 N.J. 561, 570-71 (1999)(applying Singer fee-shifting test to commercial contract).

Also prior to Buckhannon, the Appellate Division applied the catalyst doctrine in the context of the Law Against Discrimination, N.J.S.A. 10:5-1 to -49, and the Americans with Disabilities Act, 42 U.S.C.A. §§ 12101-12213. Warrington v. Vill. Supermarket, Inc., 328 N.J. Super. 410 (App. Div. 2000). The Appellate Division explained that "[a] plaintiff is considered a prevailing party 'when actual relief on the merits of [the] claim materially alters the relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff.'" *Id.* at 420 (quoting Farrar v. Hobby, 506 U.S. 103, 111-12, 113 S. Ct. 566, 573, 121 L. Ed. 2d 494, 503 (1992)); *see also* Szczepanski v. Newcomb Med. Ctr., 141 N.J. 346, 355 (1995) (noting that Hensley v. Eckerhart "generously" defines "a prevailing party [a]s one who succeeds 'on any significant issue in litigation [that] achieves some of the benefit the parties sought in bringing suit'" (quoting Hensley v. Eckerhart, 461 U.S. 424, 433, 103 S. Ct. 1933, 1938, 76 L. Ed. 2d 40, 50 (1983))). The panel noted that the "form of the judgment is not entitled to conclusive weight"; rather, courts must look to whether a plaintiff's lawsuit acted as a catalyst that prompted defendant to take action and correct an unlawful practice.

Warrington, *supra*, 328 N.J. Super. at 421. A settlement that confers the relief sought may still entitle plaintiff to attorney's fees in fee-shifting matters. *Id.* at 422.

This Court affirmed the catalyst theory again in 2001 when it applied the test to an attorney misconduct matter. Packard-Bamberger, *supra*, 167 N.J. at 444. In an OPRA matter several years later, New Jerseyans for a Death Penalty Moratorium v. New Jersey Department of Corrections, 185 N.J. 137, 143-44 (2005)(NJDPM), this Court directed the Department of Corrections to disclose records beyond those it had produced voluntarily. In ordering attorney's fees, the Court acknowledged the rationale underlying various fee-shifting statutes: to insure that plaintiffs are able to find lawyers to represent them; to attract competent counsel to seek redress of statutory rights; and to "even the fight" when citizens challenge a public entity. *Id.* at 153.

After Buckhannon, and after the trial court's decision in this case, the Appellate Division decided Teeters. The plaintiff in Teeters requested records from the Division of Youth and Family Services (DYFS), which DYFS declined to release. 387 N.J. Super. at 424. After the GRC preliminarily found in plaintiff's favor, the parties reached a settlement agreement leaving open whether plaintiff was a "prevailing party" under OPRA. *Id.* at 426-27.

The Appellate Division declined to follow Buckhannon and held that plaintiff was a "prevailing party" entitled to reasonable attorney's fees; in line with the catalyst theory, plaintiff's complaint brought about an alteration in DYFS's position, and she received a favorable result through the settlement reached. *Id.* at 431-34. In rejecting Buckhannon, the panel noted that "New Jersey statutes have a different tone and flavor" than federal fee-shifting laws. *Id.* at 430. "Both the language of our statutes and the terms of court decisions in this State dealing with the issue of counsel fee entitlements support a more indulgent view of petitioner's claim for an attorney's fee award than was allowed by the majority in Buckhannon ... " *Id.* at 431, 904 A.2d 747. As support for this proposition, the panel surveyed OPRA, Packard-Bamberger, Warrington, and other cases.

OPRA itself contains broader language on attorney's fees than the former RTKL did. OPRA provides that "[a] requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee." N.J.S.A. 47:1A-6. Under the prior RTKL, "[a] plaintiff in whose favor such an order [requiring access to public records] issues ... may be awarded a reasonable attorney's fee not to exceed \$ 500.00." N.J.S.A. 47:1A-4 (repealed 2002). The Legislature's revisions therefore: (1) mandate, rather than permit, an award of attorney's fees to a prevailing party; and (2) eliminate the \$ 500 cap on fees and permit a reasonable, and quite likely higher, fee award. Those changes expand counsel fee awards under

OPRA.” (Footnote omitted.) Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 73-76 (2008).

The Court in Mason, *supra*, at 76, held that “requestors are entitled to attorney’s fees under OPRA, absent a judgment or an enforceable consent decree, when they can demonstrate (1) ‘a factual causal nexus between plaintiff’s litigation and the relief ultimately achieved’; and (2) ‘that the relief ultimately secured by plaintiffs had a basis in law.’ Singer v. State, 95 N.J. 487, 495, cert denied (1984).”

The Complainant filed this complaint requesting that the GRC order the Custodian to disclose copies of all purchase orders, vouchers, purchase order vouchers, and warrants, including invoices and attachments for each record that the Custodian failed to provide to him. However, the GRC has determined that the Complainant’s request is invalid under OPRA because it is overly broad and failed to specifically identify a government record. *See* MAG, *supra*, Bent, *supra*, and New Jersey Builders, *supra*. Therefore, the Complainant is not a prevailing party entitled to an award of reasonable attorney’s fees.

Pursuant to Teeters, *supra*, the Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the Custodian’s conduct. Additionally, pursuant to Mason, *supra*, no factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Specifically, the Complainant’s request is invalid under OPRA because it is overly broad and failed to specifically identify a government record. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney’s fee pursuant to N.J.S.A. 47:1A-6, Teeters, *supra*, and Mason, *supra*.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian’s failure to respond in writing to the Complainant’s OPRA request for warrants, either granting access, denying access, seeking clarification or properly requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s requests for said records pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007). Further, the Custodian violated N.J.S.A. 47:1A-5.e. by failing to provide immediate access to the purchase orders, vouchers and purchase order vouchers pursuant to Herron v. Township of Montclair, GRC Complaint No. 2006-178 (February 2007).
2. The Complainant’s OPRA request is overly broad and failed to specifically identify the records sought, and because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian would have no legal duty to conduct research to locate records potentially responsive to the Complainant’s request pursuant to the Superior Court’s decisions in the Complainant’s OPRA request is overly broad and

failed to specifically identify the records sought, and because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian has no legal duty to conduct research to locate records potentially responsive to the Complainant's request pursuant to the Superior Court's decisions in MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007).

3. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the Custodian's conduct. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), no factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Specifically, the Complainant's request is invalid under OPRA because it is overly broad and failed to specifically identify a government record. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters, supra, and Mason, supra.

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Acting Executive Director

June 19, 2012