



Minutes of the Government Records Council April 8, 2010 Public Meeting – Open Session

The meeting was called to order at 9:52 a.m. at the Department of Community Affairs, Conference Room 126, Trenton, New Jersey. The Open Public Meetings Act statement was read.

The pledge of allegiance was recited while standing by all.

The meeting notice and fire emergency procedure was read by Ms. Tabakin.

Ms. Hairston called the roll:

Present: Robin Berg Tabakin, Chairwoman, Harlynn Lack (designee of Department of Community Affairs Acting Commissioner Lori Grifa), Kathryn Forsyth (designee of Department of Education Commissioner Bret Schundler) and Beth Auerswald (designee of Department of Education Commissioner Bret Schundler for the sole purpose of voting on two complaints for which Ms. Forsyth must recuse herself for personal reasons).

GRC Staff In Attendance: Executive Director Catherine Starghill, In-House Counsel Karyn Gordon, GRC Secretary Brigitte Hairston, Case Managers: Dara Lownie, Frank Caruso, John Stewart, and Deputy Attorney General Debra Allen.

Council Adjudication:

The following complaints were presented to the Council for individual adjudication:

Richard Rivera v. Wall Police Department (Monmouth) (2008-142 & 2008-143)

Mr. Stewart reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Stewart presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. Although the Custodian certified that the Complainant did not submit his request on an official OPRA request form, the Custodian's attempt to fulfill the requests results in the requests being considered valid OPRA requests pursuant to Paff v. Borough of Audubon, GRC Complaint No. 2006-01 (March 2006).
2. Because the Complainant's requests for the records relevant to GRC Complaint No. 2008-142 and 2008-143 are overbroad and fail 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 had 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), New Jersey Builders Association v. New Jersey Council of Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) and the Council's decision in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (March 2008).

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Lack and seconded by Ms. Auerswald. The motion passed unanimously.

Richard Rivera v. Wall Police Department (Monmouth) (2008-280 & 2008-281)

Mr. Stewart reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Mr. Stewart presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. Following the Council's decision in Gorman v. Gloucester City Police Department, GRC Complaint No. 2004-108 (October 2008) because privacy interests of citizens is at issue, it is necessary for the GRC to conduct an *in camera* examination of the requested mobile video recording media and then employ the common law balancing test established by the New Jersey Supreme Court in Doe v. Poritz, 142 N.J. 1 (1995) and subsequently applied by the Council in Merino v. Ho-Ho-Kus, GRC Complaint No. 2003-110 (February 2004). Therefore, the Custodian must disclose the requested mobile video recording media to the GRC so that an *in camera* examination may be conducted.
2. **The Custodian must deliver¹ to the Council in a sealed envelope a copy of the requested unredacted mobile video recording media document (see #1 above), a record index², as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4³, that the record provided is the record requested by the Council for the *in camera* examination. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
3. Because the Complainant's requests for Item No. 2 through Item No. 4 of the records relevant to GRC Complaint Number 2008-280 and the Complainant's requests for Item No. 1 through Item No. 6 of the records relevant to GRC Complaint Number 2008-281 are overbroad and fail 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 had no legal duty to conduct research

¹ The *in camera* documents may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

² The document or redaction index should identify the document and/or each redaction asserted and the lawful basis for the denial.

³ "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."

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), New Jersey Builders Association v. New Jersey Council of Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) and the Council's decision in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (March 2008).

4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.
5. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Lack and seconded by Ms. Auerswald. The motion passed unanimously.

Ms. Auerswald excused herself from the meeting having voted on the two complaints for which Ms. Forsyth must recuse herself from for personal reasons.

Ms. Tabakin read the Resolution for Closed Session (Resolution Number A 2010-01-26) to go into closed session pursuant to N.J.S.A. 10:4-12.b(7) to receive legal advice and discuss anticipated litigation in which the public body may become a party in the following matters:

1. Jesse Wolosky v. Township of Sparta (Sussex) (2008-219) ***In-camera review***
2. Jesse Wolosky v. Township of Fredon (Sussex) (2009-12) ***In-camera review***
3. Jesse Wolosky v. Township of Stillwater (Sussex) (2009-22) ***In-camera review***
4. Nancy Lewen v. Robbinsville Public School District (Mercer) (2008-211)
5. Joseph Elcavage v. West Milford Township (Passaic) (2009-7)
6. Joseph Elcavage v. West Milford Township (Passaic) (2009-8)
7. John Paff v. Township of Lawrence (Mercer) (2009-24)

A motion was made to go into closed session by Ms. Lack and seconded by Ms. Forsyth to go into closed session. The motion was adopted by a unanimous vote. A motion was made by Ms. Forsyth and seconded by Ms. Lack to end the closed session. The motion was adopted by a unanimous vote. The Council met in closed session from 10:04 a.m. until 10:45 a.m.

Open Session reconvened at 10:55 a.m. and Ms. Hairston called roll.

Present: Ms. Tabakin, Ms. Lack, and Ms. Forsyth.

A motion was made by Ms. Forsyth and seconded by Ms. Lack to approve the closed session minutes of the February 23, 2010 meeting. The motion passes by an unanimous vote.

A motion was made by Ms. Lack and seconded by Ms. Forsyth to approve the open session minutes of the February 23, 2010 meeting. The motion passes by an unanimous vote.

Council Adjudication:

The following complaints were presented to the Council for summary administrative adjudication:

1. John Paff v. Township of Lawrence (Mercer) (2009-24)
2. Christine Marks v. City of Hoboken (Hudson) (2009-274)
3. Harry Paden v. Township of Irvington (Essex) (2009-303)
4. Steven Kossup v. Sparta Board of Education (Sussex) (2009-309)
5. Michael Crook v. Township of Hamilton, Police Department (Atlantic) (2010-02)
6. John Paff v. Borough of Hi-Nela (Camden) (2010-05)
7. Daniel Meaders v. William Paterson University (Passaic) (2010-10)
8. Michael Ogg v. County of Mercer, Office on Disability Services (2010-21)
9. John F Kwasnik v. Western Monmouth Utilities Authority (2010-23)
10. Pauline A Higgins v. Township of West Caldwell (Essex) (2010-26)
11. Pauline A Higgins v. Borough of Glen Ridge (Essex) (2010-29)
12. Kevin O'Brien v. Borough of Woodcliff Lake (Bergen) (2010-32)
13. Merceda D. Goodings v. Atlantic City Housing Authority (Atlantic) (2010-34)
14. Damon Hart v. Essex County Superior Court (2010-55)
15. Jay Thomas v. Saddle Brook Police Department (Bergen) (2010-40)

Ms. Tabakin called for a motion to accept the Executive Director's recommendations as written in all of the above Administrative Complaint Dispositions. A motion was made by Ms. Forsyth and seconded by Ms. Lack. The motion passed unanimously.

The following complaints requiring individual adjudication were not put to a vote due to the lack of quorum:

1. James D'Andrea v. NJ Department of Community Affairs, Division of Local Government Services (2007-64)
2. William Gettler v. Wantage Regional Schools, Board of Education (Sussex) (2007-105)
3. Joyce Blay v. Jackson Board of Education (Ocean) (2007-177)
4. John Paff v. Borough of Lavallette (Ocean) (2007-209)
5. David Hinchcliffe v. NJ Department of Community Affairs, Division of Local Government Services (2007-306)
6. John Bentz v. Borough of Paramus (Bergen) (2008-89)
7. J.C. v. NJ Department of Education, Deputy Commissioner's Office (2008-91)
8. Robert Verry v. Borough of South Bound Brook (Somerset) (2008-161)
9. Gertrude Casselle v. NJ Department of Community Affairs, Division of Community Resources (2008-248)

10. Ursula Cargill v. NJ Department of Education (2009-9)
11. Ursula Cargill v. State Ethics Commission (2009-10)
12. James Sage v. County of Monmouth Board of Chosen Freeholders (2009-43)

Donald Baldwin v. Township of Readington (Hunterdon) (2006-165)

Ms. Starghill reviewed the GRC's analysis and issues in the case as set forth in the Supplemental Findings and Recommendations of the Executive Director. Ms. Starghill presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. Based on the Council's recent changed position on whether custodians' violations of OPRA are knowing and willful, this Custodian's specific request for reconsideration is granted and the September 30, 2009 Interim Order is amended (by this Order) to strike the last sentence in Conclusions and Recommendation #3 on page 40 of said Order which states, "However, the Custodian's actions appear to be negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law."
2. The Custodian's request for reconsideration is granted with regard to the inaccurate reference made to the Custodian's Counsel instead of the Complainant's Counsel on pages 33 and 36 and the September 30, 2009 Interim Order is so amended by this Order.
3. Pursuant to Teeters v. DYFS, 387 N.J.Super. 423 (App. Div. 2006), the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6 and Teeters, supra. Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Lack and seconded by Ms. Forsyth. The motion passed unanimously.

Z.T. v. Bernards Township Board of Education (Somerset) (2007-277)

Ms. Lowine reviewed the GRC's analysis and issues in the case as set forth in the Supplemental Findings and Recommendations of the Executive Director. Ms. Lowine presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian Counsel's argument set forth in her Exceptions is outweighed by the credible evidence adduced during the hearing at the Office of Administrative Law, and because the Custodian has failed to otherwise provide any legal basis for the Council to reject the Administrative Law Judge's findings, the Council accepts the Administrative Law Judge's Initial Decision dated January 19, 2010, which concludes:

“I hereby **FIND** that Custodian of Records Ronald Smith knowingly and willfully violated OPRA and unreasonably denied access, and that his conduct was intentional and deliberate, with knowledge of wrongfulness, and not merely negligent. Based on this finding, I **ORDER** that Ronald Smith shall be subject to a civil penalty of \$1,000 for this initial violation pursuant to N.J.S.A. 47:1A-11(a).”

However, the Council hereby **MODIFIES** the Initial Decision to require that pursuant to N.J.S.A. 47:1A-11.a., this penalty shall be collected and enforced in proceedings in accordance with the “Penalty Enforcement Law of 1999” and the rules of the Court governing actions for the collection of civil penalties. Therefore, pursuant N.J.S.A. 2A:11 and N.J. Court Rule 4:70-3, payment of civil penalties are to be made payable to the Treasurer of the State of New Jersey and shall be remitted to the GRC.

Additionally, the Council hereby **MODIFIES** the Initial Decision to include the following conclusions regarding the validity of the Complainant’s OPRA request items no. 2, 4 and 5:

The entirety of request item no. 2 and the first portion of request item no. 4 (documents authorizing release of transcripts) fails to seek specific identifiable government records. As such, said requests are invalid under OPRA pursuant to 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), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). However, the second portion of request item no. 4 (Report of Misconduct) and the entirety of request item no. 5 are valid OPRA requests because they specifically identify government records. As such, the Custodian must disclose said records to the Complainant, or provide a legal certification that said records do not exist. It is noted that this disclosure order applies to the current Custodian since the Custodian named in this complaint and assessed the knowing and willful penalty is no longer employed by the Board of Education.

2. **The former Custodian, H. Ronald Smith, shall comply with item no. 1 above regarding the payment of the \$1,000 civil penalty within five (5) business days from receipt of the Council’s Interim Order.**
3. **The current Custodian shall comply with item no. 1 above regarding the disclosure of the second portion of request item no. 4 (Report of Misconduct) and the entirety of request item no. 5 within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, if any, 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, to the Executive Director.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Lack and seconded by Ms. Forsyth. The motion passed unanimously.

Gayle Livechia v. Borough of Mount Arlington (Morris) (2008-80)

Ms. Gordon reviewed the GRC's analysis and issues in the case as set forth in the Supplemental Findings and Recommendations of the Executive Director. Ms. Gordon presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. The Custodian has failed to bear her burden of proof that the redactions made to the requested cell phone bills were authorized by law as required by N.J.S.A. 47:1A-5.g. Moreover, the Custodian has failed to articulate a basis for the need to keep the cities and states of the destination of cell phone calls confidential, as required by the common law pursuant to North Jersey Newspapers Co. v. Passaic County Bd. of Chosen Freeholders, 127 N.J. 9 (1992). See Mason v. City of Hoboken, 2008 N.J. Super. Unpub. LEXIS 865 (App.Div. Mar. 31, 2008).
2. The Custodian has failed to show that the Council's November 19, 2009 Order regarding the disclosure of the city and state of calls made on Borough-issued cell phones is (1) 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, as required by 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).
3. The Custodian has failed to show that the Council's November 19, 2009 Order regarding the actual costs of reproducing the requested audiotape is (1) 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, as required by 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).
4. Because the Custodian has failed to meet the required standard for reconsideration of the Council's November 18, 2009 Interim Order, the Custodian's Motion for Reconsideration of the Council's November 19, 2009 Interim Order is denied.
5. **The Custodian must disclose to the Complainant copies of the requested cell phone bills with the city and state of the location of the cell phone calls**

unredacted, and simultaneously provide certified confirmation of compliance, pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005),⁴ to the Executive Director, within five (5) business days of receipt of this Order.

6. Because the Custodian certified that the actual cost of each audiotape which was necessary to reproduce the meeting minutes requested by the Complainant, and because the evidence of record indicates that two audiotapes were required to reproduce the requested meeting minutes, the Custodian shall refund to the Complainant the difference between the \$10.00 copying fee the Complainant was charged and the \$1.58 which was the actual cost of the audiotapes, or \$8.42.
7. **The Custodian shall comply with Paragraph #6 above, and simultaneously provide certified confirmation of compliance, pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005),⁵ to the Executive Director, within five (5) business days of receipt of this Order.**
8. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.
9. The Council defers analysis of whether the Complainant is a prevailing party pursuant to N.J.S.A. 47:1A-6 pending the Custodian's compliance with the Council's Interim Order.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Lack and seconded by Ms. Forsyth. The motion passed unanimously.

Cecilia Bogart v. Borough of Lebanon (Hunterdon) (2008-172)

Cecilia Bogart v. Borough of Lebanon (Hunterdon) (2008-173)

Ms. Gordon reviewed the GRC's analysis and issues in the case as set forth in the Supplemental Findings and Recommendations of the Executive Director. Ms. Gordon presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian refunded the \$2.55 representing postage fees inappropriately charged for the Complainant's July 9, 2008 OPRA request on March 4, 2010, within the five (5) business days required by the Council, and simultaneously provided certified confirmation of compliance to the Executive Director of the GRC, the Custodian has complied with the Council's February 23, 2010 Interim Order.
2. Although the Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. and inappropriately charged postage fees of \$2.55 for the July 9, 2008 OPRA request, the Custodian did not unlawfully deny access to the requested executive council meeting

⁴ "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."

⁵ "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."

minutes dated December 13, 2007, properly charged the Complainant the enumerated copying rates set forth at N.J.S.A. 47:1A-5.b. for the production of records in response to the Complainant's June 26, 2008 OPRA request, properly charged the Complainant the actual postage costs associated with delivery by mail of the requested records in connection with the Complainant's June 26, 2008 OPRA request, provided the Complainant with all existing records responsive to the request, and the remainder of the requests are invalid under OPRA. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Lack. The motion passed unanimously.

Andrew Mayer v. Borough of Tinton Falls (Monmouth) (2008-245)

Mr. Caruso reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Mr. Caruso presented the following recommendations to the Council with amendments:

The Executive Director respectfully recommends the Council find that:

1. Because the e-mail addresses received through a solicitation posted on the Borough's website were received "in the course of official business," between July, 2007 and September 15, 2009, such e-mail addresses are government records pursuant to N.J.S.A. 47:1A-1.1. and are therefore subject to OPRA.
2. Because the e-mail addresses received through the Borough's website are a government record, and because said addresses were used by Councilman Skudera for political campaigning purposes, and because voter registration information may be disclosed to members of the public pursuant to N.J.S.A. 19:31-18.1(a), the e-mail addresses collected through the Borough's website are subject to disclosure under OPRA. Therefore, Councilman Skudera has unlawfully denied access to the requested records and must disclose the e-mail addresses collected through the Borough's website to the Complainant.⁶ Additionally, pursuant to N.J.S.A. 47:1A-6, Councilman Skudera failed to bear his burden of proving that the requested e-mail addresses collected through the Borough's website were exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.
3. **Councilman Skudera shall comply with Item No. 2 above within five (5) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,⁷ to the Executive Director.⁸**

⁶ The Custodian is only required to disclose those e-mail addresses collected via the Borough's website between July, 2007 and September 15, 2009.

⁷ "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."

⁸ 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

4. The Council defers analysis of whether Councilman Skudera knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending Councilman Skudera's compliance with the Council's Interim Order.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Lack and seconded by Ms. Forsyth. The motion passed unanimously.

Joseph Elcavage v. West Milford Township (Passaic) (2009-07)

Mr. Stewart reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Mr. Stewart presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. Because the evidence of record indicates that the Custodian in a timely manner disclosed to the Complainant in electronic format all of the records responsive to the Complainant's request for Item No. 1 of the records relevant to the complaint, the Custodian did not unlawfully deny the Complainant access to said records.
2. Because the Complainant's request for Item No. 2 of the records relevant to the complaint, electronic copies of all e-mails from Bettina Bieri's township account from January 1, 2008 to June 17, 2008, fails to seek specific identifiable government records, the Complainant's request is overly broad and is therefore invalid under OPRA pursuant to 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), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) and the Council's decision in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Accordingly, the Custodian has not unlawfully denied the Complainant access to said records.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Lack. The motion passed unanimously.

Joseph Elcavage v. West Milford Township (Passaic) (2009-08)

Mr. Stewart reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Mr. Stewart presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. Because the evidence of record indicates that the Custodian in a timely manner disclosed to the Complainant in electronic format all of the records responsive to the

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.

Complainant's request for Item No. 1 of the records relevant to the complaint, the Custodian did not unlawfully deny the Complainant access to said records.

2. Because the Complainant's request for Item No. 2 of the records relevant to the complaint, electronic copies of all e-mails from Councilman Robert Nolan's township account from January 1, 2005 to June 17, 2008, fails to seek specific identifiable government records, the Complainant's request is overly broad and is therefore invalid under OPRA pursuant to 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), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) and the Council's decision in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Accordingly, the Custodian has not unlawfully denied the Complainant access to said records.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Lack and seconded by Ms. Forsyth. The motion passed unanimously.

Jesse Wolosky v. Township of Fredon (Sussex) (2009-12)

Ms. Starghill reviewed the GRC's analysis and issues in the case as set forth in the *In Camera* Findings and Recommendations of the Executive Director. Ms. Starghill presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. The Custodian provided the GRC with a legal certification, the unredacted record requested for the *in camera* inspection and a redaction index on December 29, 2009. Therefore, the Custodian timely complied with the Council's December 22, 2009 Interim Order.
2. The *In Camera* review reveals that the Custodian lawfully denied access to the redacted portion of the requested record because the discussion relates to a matter for which the Township may become a party to litigation. Therefore, the governing body may exclude the public from such discussion since it is exempt from disclosure as it involves anticipated litigation pursuant to N.J.S.A. 10:4-12(b)7 and N.J.S.A. 47:1A-9.a.
3. Although the Township's OPRA request form did not conform to the minimum form requirements set forth in N.J.S.A. 47:1A-5.f. thus violating this provision of OPRA, the Custodian did certify that the request form has been revised pursuant to the standards set forth in paragraph 3 of the Council's December 22, 2009 Interim Order. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
4. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), and the Council's December 22, 2009 Interim Order, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432. Additionally, pursuant to Mason v. City of

Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is 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*. Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Lack and seconded by Ms. Forsyth. The motion passed unanimously.

Jesse Wolosky v. Township of Stillwater (Sussex) (2009-22)

Ms. Starghill reviewed the GRC's analysis and issues in the case as set forth in the *In Camera* Findings and Recommendations of the Executive Director. Ms. Starghill presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. The Custodian has complied with the Council's February 23, 2010 Interim Order by providing the Council with all records set forth in Paragraph 2 of the Order within five (5) business days of receiving the Council's Order.
2. The *In Camera* Examination set forth in the table below reveals the Custodian has lawfully denied access to the redacted portion of the November 11, 2008 executive session minutes because the redacted discussion involves review and compromise on multiple contractual terms for the position of the Chief of Police and is exempt from disclosure pursuant to N.J.S.A. 47:1A-9.a. and N.J.S.A. 10:4-12.b(7). Additionally, the discussion is specifically exempt from disclosure under OPRA as information generated by or on behalf of public employers or public employees in connection with collective negotiations, including documents and statements of strategy or negotiating position pursuant to N.J.S.A. 47:1A-1.1.
3. Although the Custodian unlawfully charged the Complainant \$5.00 for a compact disk of a requested audio recording, there is no evidence that the Complainant actually paid the proposed copying fee so the Council declined to order any refund to the Complainant. Additionally, the Council did not order disclosure of the compact disk at the actual cost because the Complainant indicated that he no longer desires a copy of the requested audio recording. Also, the Council's *in camera* review revealed that the Custodian's redactions to the November 10, 2008 executive session minutes were lawfully made for information relating to confidential contract negotiations pursuant to N.J.S.A. 10:4-12.b(7). Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
4. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Complainant has not achieved "the desired result because this complaint did not bring about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432. Additionally, pursuant to Mason v. City Clerk of the City of Hoboken, 196 N.J. 51, 77 (2008), a

factual causal nexus does not exist between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved because no disclosure or refund was ordered by the Council. 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*.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Lack. The motion passed unanimously.

John Paff v. County of Camden (2009-25)

Ms. Lownie reviewed the GRC's analysis and issues in the case as set forth in the Supplemental Findings and Recommendations of the Executive Director. Ms. Lownie presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. The Custodian and the Complainant have complied with the Council's January 26, 2010 Interim Order because:
 - a. the Custodian's Counsel made the exact amount of the fee available to the Complainant within three (3) business days from receipt of the Council's Interim Order;
 - b. the Complainant's Counsel delivered to the Custodian's Counsel within five (5) business days from receipt of the Council's Interim Order a statement declining to purchase the record, but stated that the version of the Code of Ethics provided by the Custodian on January 28, 2010 appeared to be responsive to the Complainant's OPRA request; and
 - c. the Custodian and the Custodian's Counsel provided legal certifications to the GRC's Executive Director within seven (7) business days from receipt of the Council's Interim Order indicating that the Custodian provided the Code of Ethics to the Complainant at no cost, that the Custodian's Counsel provided the exact amount of fees associated with providing said record to the Complainant, and that the Complainant, within five (5) business days from receipt of the Council's Interim Order, declined to pay said fees, but stated that the version of the Code of Ethics provided by the Custodian on January 28, 2010 appeared to be responsive to the Complainant's OPRA request.
2. Although the Custodian placed an unreasonable limitation on the Complainant's access to government records, failed to bear her burden of proving a lawful denial of access to the requested settlement agreement and failed to provide the Code of Ethics in the medium requested, there is no evidence in the record that suggests the Custodian's actions were intentional and deliberate, with knowledge of their wrongfulness. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
3. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432. Specifically,

the Custodian provided the Complainant with a written response to his OPRA request in which the Custodian granted access to some records requested and denied access to others on the basis that said records do not exist five (5) business days after the filing of this complaint. The Custodian also provided access to the requested Code of Ethics in the medium requested as ordered by the Council on January 26, 2010. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Further, the relief ultimately achieved had a basis in law because the Custodian placed an unreasonable limitation on the Complainant's access to government records by refusing to fulfill the Complainant's OPRA request until he submitted separate OPRA request forms. Custodians must also provide requested records in the medium requested pursuant to N.J.S.A. 47:1A-5.d. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), and Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008). Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Lack. The motion passed unanimously.

Cindy Merckx v. Franklin Township Board of Education (Sussex) (2009-47)

Ms. Lownie reviewed the GRC's analysis and issues in the case as set forth in the Supplemental Findings and Recommendations of the Executive Director. Ms. Lownie presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian disclosed to the Complainant the closed session minutes dated January 16, 2008, March 26, 2008 and November 18, 2008 (Session I) with no redactions and provided certified confirmation of compliance to the GRC's Executive Director within five (5) business days from receipt of the Council's Interim Order, the Custodian has complied with the Council's January 26, 2010 Interim Order.
2. Although the Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by failing to provide the Complainant with a written response to her OPRA request that specifically granted access, denied access, sought clarification or requested an extension of time within the statutorily mandated seven (7) business days, and even though the Custodian failed to bear her burden of proving a lawful denial of access to the requested closed session meeting minutes pursuant to N.J.S.A. 47:1A-6, nothing in the record suggests that the Custodian's violations of OPRA were intentional and deliberate or with knowledge of their wrongfulness. Rather, the evidence of record suggests that the Custodian mistakenly believed that the requested closed session minutes had to undergo a second approval by the Board of Education prior to their public release. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Lack and seconded by Ms. Forsyth. The motion passed unanimously.

Russell Miller v. Westwood Regional School District (Bergen) (2009-49)

Ms. Gordon reviewed the GRC's analysis and issues in the case as set forth in the Supplemental Findings and Recommendations of the Executive Director. Ms. Gordon presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian refunded to the Complainant \$2.65, representing the difference between the duplication costs charged the Complainant and the actual cost of duplication (\$2.35) via purchase order dated March 1, 2010 and provided a certification to the GRC that the actual cost of duplication of the requested audio tape was \$2.35 on March 3, 2010, the Custodian has complied with the Council's February 23, 2010 Interim Order.
2. Although the Custodian violated N.J.S.A. 47:1A-5.b. and failed to bear his burden of proving that he lawfully denied the Complainant access to the recording of the Board's January 29, 2009 meeting pursuant to N.J.S.A. 47:1A-6, the Custodian certified that he provided the Complainant with a copy of the audio tape of the Board's January 29, 2009 meeting on March 13, 2009 and timely complied with the Council's February 23, 2010 Interim Order by promptly refunding the difference between the amount charged and the actual costs of duplication. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Lack and seconded by Ms. Forsyth. The motion passed unanimously.

Sussy Bogen v. Township of Lyndhurst (Bergen) (2009-50)

Ms. Gordon reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Gordon presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. Ms. Wloch-Rapetti's failure to respond in writing to the 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 (October 2007).
2. Because Ms. Wloch-Rapetti failed to forward the Complainant's September 22, 2008 OPRA request to the Custodian or direct the Complainant to submit the OPRA

request directly to the Custodian, Ms. Wloch-Rapetti has violated N.J.S.A. 47:1A-5.h. See Kossup v. City of Newark Police Department, GRC Complaint No. 2006-174 (February 2007); George v. New Jersey Department of Environmental Protection, Nature & Historic Resources, Division of Parks & Forestry, Office of Leases, Manor of Skylands, GRC Complaint No. 2008-206 (September 2009).

3. Because the Custodian has certified that no audio recording responsive to the Complainant's September 22, 2008 OPRA request exists, and because the Complainant has provided no credible evidence to refute the Custodian's certification in this regard, the Custodian has not unlawfully denied access to the requested records. See Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005). Moreover, Ms. Wloch-Rapetti's initial response was insufficient pursuant to N.J.S.A. 47:1A-5.i. because she failed to state that no recording responsive existed in her initial response.
4. Although Ms. Wloch-Rapetti violated N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.h. and N.J.S.A. 47:1A-5.i., the Custodian has certified that no records responsive to the Complainant's September 22, 2008 OPRA request exist and that the last date upon which records that may have been responsive to the request were destroyed in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management ("DARM") was on August 19, 2008. Therefore, it is concluded that Ms. Wloch-Rapetti's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Lack and seconded by Ms. Forsyth. The motion passed unanimously.

John Paff v. Borough of Wildwood Crest (Cape May) (2009-54)

Ms. Lownie reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Lownie presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. Pursuant to N.J.S.A. 47:1A-5.b., the actual cost of the audio cassette is not \$5.44 as the Custodian alleged. The Custodian must charge the actual cost of said cassette which is determined by dividing the \$9.00 cost for the pack of cassettes by the number of cassettes in the pack.
2. The Custodian's \$25.00 charge to provide the requested audiotape does not reflect the actual cost of providing said record pursuant to N.J.S.A. 47:1A-5.b. and incorrectly includes a special service charge which is not warranted pursuant to N.J.S.A. 47:1A-5.c. As such, the Borough's Ordinance No. 1048 is invalid and the Custodian must charge the actual cost of the audiotape with no charge for labor or overhead.
3. **The Custodian shall calculate the appropriate fee in accordance with Item No. 1 above and shall make the exact amount of the fee available to the Complainant within three (3) business days from receipt of the Council's Interim Order. The**

Custodian shall disclose to the Complainant the requested audiotape upon the Complainant's payment of the actual cost within ten (10) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance in accordance with N.J. Court Rule 1:4-4⁹, to the Executive Director. In the event that the Complainant fails to pay the actual cost of the requested audiotape by the tenth (10th) business day from receipt of the Council's Interim Order, the Custodian shall provide a certification to that effect in accordance with N.J. Court Rule 1:4-4¹⁰ to the Executive Director.

4. The Borough's requirement that requestors who submit OPRA requests via mail must submit photo identification prior to receiving records is not required under OPRA and presents an obstacle to public access of government records pursuant to N.J.S.A. 47:1A-1. However, the submission of photo identification *may* be necessary when a requestor pays by check for the legitimate reason of pursuing the individual if the check bounces, but the Custodian's blanket requirement that all requestors provide same is unreasonable and unnecessary, especially before the method of payment is known. Likewise, a blanket requirement that all requestors provide photo identification to verify requestors of victims' records is unreasonable especially when the records requested in this complaint are obviously not victims' records.
5. The Borough's OPRA request form provides misinformation regarding the accessibility of personnel records and includes a burdensome requirement for requestors who submit OPRA requests by mail to provide photo identification, in essence, denying the requestor access to the records. As such, the Borough of Wildwood Crest shall either adopt the GRC's Model Request Form located at <http://www.nj.gov/grc/custodians/request/>, or amend its OPRA request form in the following ways:
 - Either delete the portion of the Borough's request form regarding the personnel records exemption, or amend said statement to include the remainder of the applicable provision of OPRA at N.J.S.A. 47:1A-10;
 - Delete the following sentence: "Note: A photocopy of acceptable photo identification (i.e., driver's license, passport) must be provided with all requests received via mail."
6. **The Custodian shall comply with Item No. 5 above within five (5) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4¹¹, to the Executive Director.**
7. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

⁹ "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."

¹⁰ "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."

¹¹ "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."

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

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as amended. A motion was made by Ms. Forsyth and seconded by Ms. Lack. The motion passed unanimously.

Marc Liebeskind v. Piscataway Township Police Department (Middlesex) (2009-62)

Mr. Stewart reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Mr. Stewart presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. The Custodian's failure to respond in writing to the Complainant's February 3, 2009 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 (October 2007).
2. Because the Custodian certified that records responsive to Item No.1 and Item No. 2 of the records request, which are the audio recordings of radio transmissions for Computer Aided Dispatching incident report numbers 8022292 and 8022298, as well as Item No. 5 of the records request, which is the Police Department procedure for mailing complaints, do not exist, and because there is no credible evidence in the record to refute the Custodian's certification, the Custodian did not unlawfully deny access to the requested records pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).
3. Apart from the Custodian's "deemed" denial, because the Custodian certified that the documents that comprise Item No. 3 of the records request which are the documents related to Computer Aided Dispatching incident report number 8022292 were disclosed to the Complainant on February 19, 2009, and because there is no credible evidence in the record to refute said certification, there was no unlawful denial of access pursuant to N.J.S.A. 47:1A-5.g. and Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005).
4. Because the Custodian responded to Item No. 4 of the Complainant's request, the Police Department procedure for using video cameras in police cars, by denying the Complainant access to the record in the medium the Complainant specifically requested; to wit, a tangible copy, and because N.J.S.A. 47:1A-5.d. provides that a custodian shall permit access to a government record in the medium requested, the Custodian has unlawfully denied the Complainant access to the record pursuant to N.J.S.A. 47:1A-5.d. and Manahan v. Salem County, GRC Complaint No. 2006-184 (December 2008). Accordingly, the Custodian shall disclose to the Complainant a copy of the Police Department procedure for using video cameras in police cars.

5. **The Custodian shall comply with item #4 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 1:4-4¹², to the Executive Director.¹³**
6. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Lack and seconded by Ms. Forsyth. The motion passed unanimously.

Brian Kvederas v. Township of Morristown (Morris) (2009-70)

Ms. Gordon reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Gordon presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. The Custodian's written request for an extension of time to respond in writing to the Complainant's OPRA request is appropriate under OPRA. See 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 (October 2007).
2. Although the Custodian responded in writing to the Complainant's February 5, 2009 OPRA request within the statutorily mandated time frame pursuant to N.J.S.A. 47:1A-5.i., the Custodian's response was legally insufficient because she failed to respond to each request item individually; in her response to the Complainant's OPRA request, the Custodian failed to note those request items which did not exist. Therefore, the Custodian has violated N.J.S.A. 47:1A-5.g.
3. Because request items Nos. 2, 3, 5 and 6 of the Complainant's February 6, 2009 OPRA request are overly broad and would require the Custodian to conduct research to locate responsive records, these request items are invalid under OPRA. 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); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007); and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). The Custodian did not, therefore, unlawfully deny access to such request items under OPRA. N.J.S.A. 47:1A-6.

¹² "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."

¹³ 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. Because the Complainant's February 6, 2009 OPRA request item No. 4 seeks "[c]orrespondence from the Town to Cigna relating to [a retirees' insurance meeting on January 23, 2009], and because this is "information which is a communication between a public agency and its insurance carrier, administrative service organization or risk management office" which is exempt from the definition of a government record under N.J.S.A. 47:1A-1.1, the Custodian did not unlawfully deny access to request item No. 4 of the Complainant's February 6, 2009 OPRA request. N.J.S.A. 47:1A-6.
5. The Complainant's assertion that additional records responsive must exist based on his experience as a Township employee does not constitute competent, credible evidence sufficient to refute the Custodian's certification. Moreover, pursuant to N.J.S.A. 47:1A-7.b., which delineates the Council's powers and duties, the GRC does not have the authority to regulate the manner in which a Township maintains its files or which records a Township must maintain. See Kwanzaa v. Dept of Corrections, GRC Complaint No. 2004-167 (March 2005)(the GRC does not have authority over the content of a record); Gillespie v. Newark Public Schools, GRC Complaint No. 2004-105 (November 2004)(the GRC does not have the authority to adjudicate the validity of a record); Katinsky v. River Vale Township, GRC Complaint No. 2003-68 (November 2003)(the integrity of a requested record is not within the GRC's authority to adjudicate); Toscano v. NJ Dept of Labor, GRC Complaint No. 2005-59 (September 2005)(the GRC does not have authority over the condition of records provided by a Custodian); Van Pelt v. Twp of Edison BOE, GRC Complaint No. 2007-179 (January 2008)(GRC does not have the authority to regulate the manner in which a Township maintains its files or which records a Township must maintain).

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Lack and seconded by Ms. Forsyth. The motion passed unanimously.

Charles Speicher v. Township of Long Beach (Ocean) (2009-79)

Mr. Caruso reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Mr. Caruso presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian responded in writing to the Complainant's OPRA requests in a timely manner stating that no lists responsive to the Complainant's January 12, 2009 OPRA request exists and subsequently certified to such in the Statement of Information, and because the Complainant has provided no credible evidence to refute the Custodian's certification in this regard, the Custodian has not unlawfully denied access to the requested records. Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).
2. The invoices from the State Health Benefits Plan identified by the Custodian as containing information responsive to the Complainant's January 12, 2009 OPRA request are exempt from disclosure under OPRA. See Beaver v. Township of

Middletown, GRC Complaint No. 2005-243 (August 2006); N.J.S.A. 47:1A-1.1., N.J.S.A. 47:1A-9.a. and N.J.A.C. 17:9-1.2.

3. The communications between the Township and its insurance broker identified by the Custodian as containing information responsive to the Complainant's January 12, 2009 OPRA request are exempt from the definition of a government record under OPRA pursuant to N.J.S.A. 47:1A-1.1.
4. Because the Custodian responded in writing to the Complainant's OPRA requests in a timely manner stating that no lists responsive to the Complainant's February 5, 2009 and February 17, 2009 OPRA requests exist and subsequently certified to such in the Statement of Information, and because the Complainant has provided no credible evidence to refute the Custodian's certification in this regard, the Custodian has not unlawfully denied access to the requested records. *See* Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Lack and seconded by Ms. Forsyth. The motion passed unanimously.

Keith Werner v. NJ Department of Treasury, Division of Revenue (2009-95)

Mr. Caruso reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Mr. Caruso presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. Because Ms. Harrington failed to forward the Complainant's January 28, 2009 OPRA request to the Custodian or direct the Complainant to submit the OPRA request directly to the Custodian, Ms. Harrington has violated N.J.S.A. 47:1A-5.h. *See* Kossup v. City of Newark Police Department, GRC Complaint No. 2006-174 (February 2007)
2. The fees imposed under N.J.S.A. 22A:4-1a, N.J.S.A. 12A:9-525, and N.J.A.C. 17:33-1 et seq. are lawful and not excessive under OPRA pursuant to N.J.S.A. 47:1A-5.b., Donato v. Jersey City Police Department, GRC Complaint No. 2005-251 (April 2007) and Truland v. Borough of Madison, GRC Complaint No. 2006-88 (September 2007).
3. Ms. Harrington violated N.J.S.A. 47:1A-5.h. by failing to direct the Complainant's OPRA request to the Custodian or direct the Complaint to the Custodian. However because Ms. Harrington responded to the Complainant's request in a timely manner and subsequently certified that she did not understand that the request was an official OPRA request, it is concluded that Ms. Harrington's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Lack. The motion passed unanimously.

John Paff v. Gloucester City (Camden) (2009-102)

Ms. Lownie reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Lownie presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated deadline date upon which the requested closed session minutes would be made available, the Custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i. and Starkey v. NJ Department of Transportation, GRC Complaint Nos. 2007-315, 2007-316 and 2007-317 (February 2009). The Council notes that although the Custodian failed to provide the Complainant with a further written response by his extended deadline of March 13, 2009, the Complainant's voluntary agreement to extend the deadline to March 20, 2009 moots any violation of OPRA.
2. Pursuant to Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), the Council must conduct an *in camera* review of the requested records (the first three (3) closed session meetings held on or after August 1, 2008, dated August 4, 2008, August 21, 2008 and September 2, 2008) to determine the validity of the Custodian's assertion that the redactions made to the requested closed session minutes are contractual discussions regarding negotiations with the City's unions and employment negotiations with the Chief of Police and Deputy Chief of Police, as well as a discussion of litigation pursuant to N.J.S.A. 47:1A-9.a. and N.J.S.A. 10:4-12.
3. **The Custodian must deliver¹⁴ to the Council in a sealed envelope nine (9) copies of the requested unredacted documents (see # 2 above), a document or redaction index¹⁵, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4¹⁶, that the documents provided are the documents requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
4. Because the Custodian's March 20, 2009 written response to the Complainant clarified that the Councilmen failed to respond to the Custodian's request for the requested e-mails, Councilmen Marchese and Ferry, via the current Custodian, must disclose the requested e-mails to the Complainant.
5. **Councilmen Marchese and Ferry shall comply with item # 4 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**

¹⁴ The *in camera* documents may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

¹⁵ The document or redaction index should identify the document and/or each redaction asserted and the lawful basis for the denial.

¹⁶ "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."

compliance, in accordance with N.J. Court Rule 1:4-4¹⁷, to the Executive Director.¹⁸

6. The Custodian's charge of \$7.50 to scan and e-mail records to the Complainant is a violation of N.J.S.A. 47:1A-5.b. because said fee does not reflect the actual cost of providing the copies, which is likely zero. See Libertarian Party of Central New Jersey v. Murphy, 384 N.J. Super. 136 (App. Div. 2006), Moore v. Board of Chosen Freeholders of Mercer County, 39 N.J. 26 (1962), and Dugan v. Camden County Clerk's Office, 376 N.J. Super. 271 (App. Div. 2005). Thus, the Complainant is not required to pay the Custodian's \$7.50 charge.
7. Upon the GRC's review of the Complainant's OPRA request attached to his Denial of Access Complaint which was submitted on the agency's OPRA request form, it is confirmed that said OPRA request form does not contain "a statement of the requestor's right to challenge a decision by the public agency to deny access and the procedure for filing an appeal" as is required by N.J.S.A. 47:1A-5.f. Therefore, the City's OPRA request form at the time of the Complainant's OPRA request violated N.J.S.A. 47:1A-5.f.
8. While the City's OPRA request form advises requestors that personnel records are exempt from disclosure (pursuant to N.J.S.A. 47:1A-10), the form does not also inform requestors that there are exceptions to the personnel record exemption under OPRA. Additionally, the statement contained on the City's OPRA request form which indicates that police investigation records are exempt from public access under OPRA is misleading because said statement fails to address the disclosure of arrest reports provided for under N.J.S.A. 47:1A-3.b. As such, pursuant to O'Shea v. Township of West Milford, GRC Complaint No. 2007-237 (December 2008), a requestor may be deterred from submitting an OPRA request for certain police investigation reports or personnel records because the City's form provides misinformation regarding the accessibility of said records, in essence, denying the requestor access to the records. However, in the Custodian's unsigned Statement of Information dated May 14, 2009, the Custodian stated that the City has since adopted the GRC's Model Request Form. The GRC accessed a copy of the City's OPRA request form from its website¹⁹ on January 7, 2010. The OPRA request form posted to the City's website is the GRC's Model Request Form. As such, the Council declines to order the Custodian to amend the City's OPRA request form.
9. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the outcome of the Council's *in camera* review as well as Councilmen Marchese and Ferry's compliance with the Council's Interim Order.

¹⁷ "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."

¹⁸ 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.

¹⁹ http://www.cityofgloucester.org/government_files/OPRA.pdf.

10. The Council defers analysis of whether the Complainant is a prevailing party pending the outcome of the Council's *in camera* review as well as Councilmen Marchese and Ferry's compliance with the Council's Interim Order.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Lack. The motion passed unanimously.

Robert Verry v. Borough of South Bound Brook (Somerset) (2009-108)

Mr. Caruso reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Mr. Caruso presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that because the Complainant's OPRA request for every e-mail from the Custodian's e-mail account from September 7, 2007 through September 10, 2007, the week of March 23, 2008 and the week of March 30, 2008 fails to seek specific identifiable government records, the Complainant's request is overly broad and is therefore invalid under OPRA pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), and the Council's decision in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Accordingly, the Custodian has not unlawfully denied the Complainant access to said records. *See also* Sandoval v. NJ State Parole Board, GRC Complaint No. 2006-167 (October 2008).

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Lack and seconded by Ms. Forsyth. The motion passed unanimously.

Donna Antonucci v. Hoboken Board of Education (Hudson) (2009-116)

Mr. Caruso reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Mr. Caruso presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that because the Custodian responded on the seventh (7th) business day after receipt of the Complainant's OPRA request stating that no record responsive exists and subsequently certified in the Statement of Information that the Hoboken Board of Education did not receive the requested record until April 6, 2009 (after the date of the Complainant's OPRA request), and there is no credible evidence in the record to refute the Custodian's certification, the Custodian has not unlawfully denied access to the requested record pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005) and Driscoll v. School District of the Chathams (Morris), GRC Complaint No. 2007-303 (June 2008). Additionally, the Custodian has borne his burden pursuant to N.J.S.A. 47:1A-6 of proving a lawful denial of access and was under no obligation to

provide the requested record to the Complainant since the requested record did not exist at the time of the Complainant's request.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Lack and seconded by Ms. Forsyth. The motion passed unanimously.

Neil Yoskin v. NJ Department of Environmental Protection (2009-117)

Mr. Stewart reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Mr. Stewart presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. The Custodian's failure to respond in writing to the Complainant's February 20, 2009 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 (October 2007).
2. The Custodian did not unlawfully deny the Complainant access to any of the requested records by failing or refusing to determine that any such record was responsive to the Complainant's request pursuant to Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005).
3. Pursuant to N.J.S.A. 47:1A-1.1, the Custodian has carried his burden of proving a lawful denial of access to an unredacted copy of First Energy Corporation's check dated October 15, 2007.
4. Because the Complainant's request fails to seek specifically identifiable government records and requires the Custodian to conduct research to ascertain the records responsive to the request, said request, with the exception of Record No. 28, is invalid under OPRA pursuant to 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), New Jersey Builders Association v. NJ Council on Affordable Housing, 390 N.J. Super. 166 (App Div.), *certif. denied* 190 N.J. 394 (2007) and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
5. Pursuant to Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of Record No. 28, the "Highlands Council Applicability Determination Review Checklist and Comments to New Jersey Department of Environmental Protection dated May 5, 2008," to determine the validity of the assertion by the Custodian that the record was not unlawfully withheld from disclosure.

6. **The Custodian must deliver²⁰ to the Council in a sealed envelope nine (9) copies of the requested unredacted record described in paragraph #5 above, a document or redaction index²¹, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,²² that the document provided is the document requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
7. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Lack. The motion passed unanimously.

Michael Ping v. Borough of Brielle (Monmouth) (2009-132)

Ms. Lownie reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Lownie presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. Under the state of the law at the time of the Complainant's requests, the Complainant's records requests dated July 17, 2007 and August 22, 2007 are not valid OPRA requests because the Complainant failed to submit said requests on the Borough's official OPRA request form, and as such, there is no unlawful denial of access under OPRA pursuant to N.J.S.A. 47:1A-5.g., MAG Entertainment LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Twp. of Stafford Police Dept., 381 N.J. Super. 30 (App. Div. 2005), and Gannett New Jersey Partners L.P. v. County of Middlesex, 379 N.J. Super. 205 (App. Div. 2005).²³
2. Because the Custodian, original Zoning Officer and current Zoning Officer all certified that they did not receive any OPRA requests from the Complainant dated July 8, 2008 and April 6, 2009, and because the Complainant has not provided any evidence to contradict said certifications, the Custodian did not unlawfully deny access to the Complainant's requests dated July 8, 2008 and April 6, 2009.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Lack and seconded by Ms. Forsyth. The motion passed unanimously.

²⁰ The *in camera* documents may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

²¹ The document or redaction index should identify the document and/or each redaction asserted and the lawful basis for the denial.

²² "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."

²³ It is also noted that said requests are not valid OPRA requests because they do not seek identifiable government records, but are rather requests for information.

Cynthia McBride v. Borough of Mantoloking (Ocean) (2009-138)

Ms. Lownie reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Lownie presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian certified that fulfilling the Complainant's OPRA request would take seven (7) minutes and because seven (7) minutes is not an extraordinary amount of time to fulfill an OPRA request, a special service charge is not warranted pursuant to N.J.S.A. 47:1A-5.c. As such, the Borough's Ordinance No. 564 is invalid and the Custodian must disclose to the Complainant the requested records at the actual cost, pursuant to N.J.S.A. 47:1A-5.b., which is \$0.00 because there is no cost incurred by the Borough to transmit the requested records electronically.
2. **The Custodian shall comply with item # 1 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, if any, 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 1:4-4²⁴, to the Executive Director.²⁵**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as amended. A motion was made by Ms. Forsyth and seconded by Ms. Lack. The motion passed unanimously.

Kimberly Smela v. City of Newark (Essex) (2009-254)

Mr. Stewart reviewed the GRC's analysis and issues in the case as set forth in the Supplemental Findings and Recommendations of the Executive Director. Mr. Stewart presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian failed and refused to forward certified confirmation of compliance in accordance with N.J. Court Rule 1:4-4 to the Executive Director within five (5) business days from receipt of the Council's Interim Order, the Custodian has not complied with the terms of the Council's December 22, 2009 Interim Order and is in contempt of said Order.

²⁴ "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."

²⁵ 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.

2. Because the Custodian denied the Complainant access to the records relevant to the complaint, failed to cite a legal basis for exempting the requested records from public access and failed to submit a completed Statement of Information to the GRC when requested to do so, it is possible that the Custodian's actions were intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. As such, the complaint should be referred to the Office of Administrative Law for determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Lack. The motion passed unanimously.

Richard Rivera v. City of Atlantic City, Police Department (Atlantic) (2010-12)

Mr. Stewart reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Mr. Stewart presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. The Custodian's failure to respond in writing to the 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 (October 2007).
2. Because the Superior Court in O'Shea v. Township of West Milford, 410 N.J. Super. 371 (App. Div. 2009) found that use of force reports cannot be exempt from disclosure under OPRA as criminal investigatory records because they are required to be made, and because the Custodian failed to otherwise cite a legal basis for exempting the requested records from access, the Custodian failed to meet her burden of proving that denial of access to the requested records is authorized by law pursuant to N.J.S.A. 47:1A-6., and the Custodian shall therefore disclose to the Complainant the use of force reports for 2008 in unredacted form, except for the names of subjects not arrested on those cases where there was an arrest made or where charges were made.
3. **The Custodian shall comply with paragraph #2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, if any, including a detailed document index explaining the lawful basis for any redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4²⁶, to the Executive Director.**

²⁶ "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."

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

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Lack. The motion passed unanimously.

Regina Okafor v. Township of Irvington (Essex) (2010-46)

Mr. Stewart reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Mr. Stewart presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that based on the inadequate evidence presented in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the records responsive to the Complainant's request and/or violated OPRA by charging the Complainant excessive special service charge fees. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts to determine whether the Custodian unlawfully denied access to the requested records and/or charged the Complainant excessive special service charge fees, and if so, for a further determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Lack and seconded by Ms. Forsyth. The motion passed unanimously.

Complaints on Appeal: None.

Complaints Adjudicated on NJ Superior Court & NJ Supreme Court: None.

Executive Director's Report and New Business: Ms. Starghill informed the Council members about the Op-ed that appeared in the Press of Atlantic City newspaper today and thanks the GRC staff for diligently preparing complaints for adjudication which result in aggressive meeting agendas month after month.

Public Comment: Andrew Mayer spoke favorably about the GRC adjudication of his complaint.

A motion to end the Council's meeting was made by Ms. Lack and seconded by Ms. Forsyth. The motion passed unanimously.

Meeting adjourned at 12:12 p.m.

Respectfully submitted,

Harlynn Lack, Secretary

Date Approved: