



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
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TRENTON, NJ 08625-0819

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ROBIN BERG TABAKIN, Chair
COMMISSIONER JOSEPH V. DORIA, JR.
COMMISSIONER LUCILLE DAVY
DAVID FLEISHER
CATHERINE STARGHILL Esq., Executive Director

FINAL DECISION

December 18, 2008 Government Records Council Meeting

Shirlee Manahan
Complainant

Complaint No.2006-184

v.

Salem County
Custodian of Record

At the December 18, 2008 public meeting, the Government Records Council ("Council") considered the December 10, 2008 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 this complaint should be dismissed because the Complainant voluntarily withdrew her complaint from the Office of Administrative Law via letter dated August 4, 2008.

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 18th Day of December, 2008

Robin Berg Tabakin, Chairman
Government Records Council
I attest the foregoing is a true and accurate record of the Government Records Council.



David Fleisher, Secretary
Government Records Council

Decision Distribution Date: December 22, 2008

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
December 18, 2008 Council Meeting**

**Shirlee Manahan¹
Complainant**

GRC Complaint No. 2006-184

v.

**Salem County²
Custodian of Records**

Records Relevant to Complaint: The Complainant requests that the following records be provided to her electronically:

1. Salem County Check Registry and handwritten checks for 2006,
2. List of all county employees, and their departments, who have been issued vehicles,
3. All e-mails relating to Complainant's complaint regarding the Public Information Office ("PIO") oversight from October 3, 2006 to present,
4. A copy of the most recent cell phone and/or Blackberry phone bill for Salem County Freeholders,
5. IT Department Budget for 2006 and PIO Human Resources Budget for 2006,
6. A list of all bills paid in 2006 by the Salem County Improvement Authority, and
7. A list of all county employees issued cell phones or Blackberry phones.

Request Made: October 10, 2006

Response Made: October 12, 2006

Custodian: Earl Gage

GRC Complaint Filed: October 16, 2006

Background

December 19, 2007

Government Records Council's ("Council") Interim Order. At its December 19, 2007 public meeting, the Council considered the December 12, 2007 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. The Custodian appropriately complied with the GRC's September 26, 2007 Interim Order on November 19, 2007.

¹ No legal representative listed on record.

² Represented by Elaine Voyles, Esq. (Pennsville, NJ)

2. As previously decided in the GRC's September 26, 2007 Interim Order, because the Custodian denied the Complainant's request that the records be sent to her electronically, stating that the Custodian did not have the capability to transmit the records electronically, only to later supply the Council with a chart detailing some of the charges the Custodian planned to impose on the Complainant for scanning and e-mailing the records responsive from a different department, as well as the Custodian's failure to respond to the GRC's request for additional information regarding the special service charge, 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, this complaint shall 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.

December 20, 2007

Council's Interim Order distributed to the parties.

February 4, 2008

Complaint transmitted to the Office of Administrative Law.

August 4, 2008

Letter from Complainant to the Administrative Law Judge. The Complainant states that she has reached a settlement with Salem County and wishes to withdraw her complaint.

Analysis

No analysis is required.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that this complaint should be dismissed because the Complainant voluntarily withdrew her complaint from the Office of Administrative Law via letter dated August 4, 2008.

Prepared By: Dara Lownie
Senior Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

December 10, 2008



State of New Jersey

GOVERNMENT RECORDS COUNCIL

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

INTERIM ORDER

December 19, 2007 Government Records Council Meeting

Shirlee Manahan
Complainant

Complaint No. 2006-184

v.

Salem County
Custodian of Record

At the December 19, 2007 public meeting, the Government Records Council ("Council") considered the December 12, 2007 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 Custodian appropriately complied with the GRC's September 26, 2007 Interim Order on November 19, 2007.
2. As previously decided in the GRC's September 26, 2007 Interim Order, because the Custodian denied the Complainant's request that the records be sent to her electronically, stating that the Custodian did not have the capability to transmit the records electronically, only to later supply the Council with a chart detailing some of the charges the Custodian planned to impose on the Complainant for scanning and e-mailing the records responsive from a different department, as well as the Custodian's failure to respond to the GRC's request for additional information regarding the special service charge, 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, this complaint shall 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.



Interim Order Rendered by the
Government Records Council
On The 19th Day of December, 2007

Robin Berg Tabakin, Vice Chairman
Government Records Council

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

David Fleisher, Secretary
Government Records Council

Decision Distribution Date: December 20, 2007

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
December 19, 2007 Council Meeting**

**Shirlee Manahan¹
Complainant**

GRC Complaint No. 2006-184

v.

**Salem County²
Custodian of Records**

Records Relevant to Complaint: The Complainant requests that the following records be provided to her electronically:

- 1) Salem County Check Registry and handwritten checks for 2006,
- 2) List of all county employees, and their departments, who have been issued vehicles,
- 3) All e-mails relating to Complainant's complaint regarding the Public Information Office ("PIO") oversight from October 3, 2006 to present,
- 4) A copy of the most recent cell phone and/or Blackberry phone bill for Salem County Freeholders,
- 5) IT Department Budget for 2006 and PIO Human Resources Budget for 2006,
- 6) A list of all bills paid in 2006 by the Salem County Improvement Authority, and
- 7) A list of all county employees issued cell phones or Blackberry phones.

Request Made: October 10, 2006

Response Made: October 12, 2006

Custodian: Earl Gage

GRC Complaint Filed: October 16, 2006

Background

September 26, 2007

Government Records Council's ("Council") Interim Order. At its September 26, 2007 public meeting, the Council considered the (date of FR) 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) Pursuant N.J.S.A. 47:1A-7.b and Loigman v. Township of Middletown, GRC Complaint No. 2004-138 (March 2005), the GRC

¹No legal representative listed on record.

² Represented by Elaine Voyles, Esq. (Pennsville, NJ).

does not have authority to regulate how a Custodian utilizes its Counsel in its response to an OPRA request. The Custodian may, therefore, use an attorney to respond to an OPRA request.

- 2) Because the Custodian failed to provide the Complainant with the records responsive in the medium requested and failed to provide copies of the requested records in a meaningful medium, the Custodian has violated N.J.S.A. 47:1A-5.d. and unlawfully denied access.
- 3) Because the Custodian's October 12, 2006 response to the Complainant's request for a list of all county employees and their departments who have been issued vehicles, and a list of all county employees issued a cell phone or a Blackberry, failed to inform the Complainant when the records would be made available, or provide a specific basis for denial of access, the Custodian has violated N.J.S.A. 47:1A-5.i. and unlawfully denied access.
- 4) Because the Custodian failed to indicate the specific basis for the denial of a copy of the most recent cell phone and/or Blackberry phone bills for County Freeholders, the Custodian has failed to prove that the denial of access was authorized by law, therefore violating N.J.S.A. 47:1A-6 and unlawfully denying access.
- 5) Additionally, the Custodian should have granted access to the requested cell phone and Blackberry bills for County Freeholders with the appropriate redactions made pursuant to N.J.S.A. 47:1A-5.g., which states that a "custodian shall delete or excise from a copy of the record that portion which the custodian asserts is exempt from access *and shall promptly permit access to the remainder of the record...*" (Emphasis added.). The Custodian has, therefore, violated N.J.S.A. 47:1A-5.g. and unlawfully denied access.
- 6) Because the Custodian failed to immediately provide the Complainant with the requested budgets in the medium requested, the Custodian has violated N.J.S.A. 47:1A-5.d. and N.J.S.A. 47:1A-5.e. and unlawfully denied access.
- 7) Because the Custodian directed the Complainant to the appropriate Custodian of the requested list of all bills paid in 2006 by the Salem County Improvement Authority pursuant to N.J.S.A. 47:1A-5.h., the Custodian has not violated OPRA.
- 8) Because the service fees which the Custodian seeks to charge for costs associated with gathering the large number of records responsive that will need to be redacted, scanned and e-mailed to the Complainant, and the time it will take the Custodian to fulfill the records request in the medium requested, the charge appears to be reasonable and based on the actual cost of labor for personnel providing the service and therefore the Custodian is authorized to charge this special service fee of \$12.05 an hour. However, because there are no physical costs associated with the scanning of documents, such as the cost of paper and toner associated with the physical duplication of the records requested, the Custodian may not charge duplication costs in addition to service charges authorized by N.J.S.A. 47:1A-5.d.

- 9) The Custodian is to obtain the cost of electronically providing copies of all of the records responsive to the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5, and inform the Complainant of said costs.
- 10) **The Custodian is to provide the information required in #9 above to the Complainant and the Executive Director within five (5) business days after receipt of the Council's decision and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.**
- 11) **The Complainant is to inform the Custodian within five (5) business days after receipt of the cost information whether or not she still wishes to receive the requested documents electronically.**
- 12) Because the Custodian denied the Complainant's request that the records be sent to her electronically, stating that the Custodian did not have the capability to transmit the records electronically, only to later supply the Council with a chart detailing some of the charges the Custodian planned to impose on the Complainant for scanning and e-mailing the records responsive from a different department, as well as the Custodian's failure to respond to the GRC's request for additional information regarding the special service charge, 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, this 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.

October 2, 2007

Council's Interim Order distributed to the parties.

November 21, 2007

Custodian's response to the Council's Interim Order. The Custodian's Counsel submitted a certification stating that the records were sent electronically pursuant to the Complainant's request on November 19, 2007. The delay in disclosing the records were attributable to multiple directives to the Custodian and the Complainant in the GRC's Interim Order, and was exacerbated by a misunderstanding between the Custodian and the Custodian's Counsel regarding who was actually sending the records to the Complainant.

Analysis

Whether the Custodian complied with the Council's September 26, 2007 Interim Order?

The Custodian appropriately complied with the GRC's September 26, 2007 Interim Order on November 19, 2007. The delay in disclosing the records were attributable to multiple directives to the Custodian and the Complainant in the GRC's

Interim Order, and was exacerbated by a misunderstanding between the Custodian and the Custodian's Counsel regarding who was actually sending the records to the Complainant.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian appropriately complied with the GRC's September 26, 2007 Interim Order on November 19, 2007.
2. As previously decided in the GRC's September 26, 2007 Interim Order, because the Custodian denied the Complainant's request that the records be sent to her electronically, stating that the Custodian did not have the capability to transmit the records electronically, only to later supply the Council with a chart detailing some of the charges the Custodian planned to impose on the Complainant for scanning and e-mailing the records responsive from a different department, as well as the Custodian's failure to respond to the GRC's request for additional information regarding the special service charge, 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, this complaint shall 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.

Approved By:

Catherine Starghill, Esq.
Executive Director

December 12, 2007



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VINCENT P. MALTESE, Chairman
ACTING COMMISSIONER CHARLES RICHMAN
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INTERIM ORDER

September 26, 2007 Government Records Council Meeting

Shirlee Manahan
Complainant
v.
Salem County
Custodian of Record

Complaint No. 2006-184

At the September 26, 2007 public meeting, the Government Records Council ("Council") considered the September 19, 2007 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

- 1) Pursuant N.J.S.A. 47:1A-7.b and Loigman v. Township of Middletown, GRC Complaint No. 2004-138 (March 2005), the GRC does not have authority to regulate how a Custodian utilizes its Counsel in its response to an OPRA request. The Custodian may, therefore, use an attorney to respond to an OPRA request.
- 2) Because the Custodian failed to provide the Complainant with the records responsive in the medium requested and failed to provide copies of the requested records in a meaningful medium, the Custodian has violated N.J.S.A. 47:1A-5.d. and unlawfully denied access.
- 3) Because the Custodian's October 12, 2006 response to the Complainant's request for a list of all county employees and their departments who have been issued vehicles, and a list of all county employees issued a cell phone or a Blackberry, failed to inform the Complainant when the records would be made available, or provide a specific basis for denial of access, the Custodian has violated N.J.S.A. 47:1A-5.i. and unlawfully denied access.
- 4) Because the Custodian failed to indicate the specific basis for the denial of a copy of the most recent cell phone and/or Blackberry phone bills for County Freeholders, the Custodian has failed to prove that the denial of access was authorized by law, therefore violating N.J.S.A. 47:1A-6 and unlawfully denying access.



- 5) Additionally, the Custodian should have granted access to the requested cell phone and Blackberry bills for County Freeholders with the appropriate redactions made pursuant to N.J.S.A. 47:1A-5.g., which states that a “custodian shall delete or excise from a copy of the record that portion which the custodian asserts is exempt from access *and shall promptly permit access to the remainder of the record...*” (Emphasis added.). The Custodian has, therefore, violated N.J.S.A. 47:1A-5.g. and unlawfully denied access.
- 6) Because the Custodian failed to immediately provide the Complainant with the requested budgets in the medium requested, the Custodian has violated N.J.S.A. 47:1A-5.d. and N.J.S.A. 47:1A-5.e. and unlawfully denied access.
- 7) Because the Custodian directed the Complainant to the appropriate Custodian of the requested list of all bills paid in 2006 by the Salem County Improvement Authority pursuant to N.J.S.A. 47:1A-5.h., the Custodian has not violated OPRA.
- 8) Because the service fees which the Custodian seeks to charge for costs associated with gathering the large number of records responsive that will need to be redacted, scanned and e-mailed to the Complainant, and the time it will take the Custodian to fulfill the records request in the medium requested, the charge appears to be reasonable and based on the actual cost of labor for personnel providing the service and therefore the Custodian is authorized to charge this special service fee of \$12.05 an hour. However, because there are no physical costs associated with the scanning of documents, such as the cost of paper and toner associated with the physical duplication of the records requested, the Custodian may not charge duplication costs in addition to service charges authorized by N.J.S.A. 47:1A-5.d.
- 9) The Custodian is to obtain the cost of electronically providing copies of all of the records responsive to the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5, and inform the Complainant of said costs.
- 10) **The Custodian is to provide the information required in #9 above to the Complainant and the Executive Director within five (5) business days after receipt of the Council’s decision and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.**
- 11) **The Complainant is to inform the Custodian within five (5) business days after receipt of the cost information whether or not she still wishes to receive the requested documents electronically.**
- 12) Because the Custodian denied the Complainant’s request that the records be sent to her electronically, stating that the Custodian did not have the capability to transmit the records electronically, only to later supply the

Council with a chart detailing some of the charges the Custodian planned to impose on the Complainant for scanning and e-mailing the records responsive from a different department, as well as the Custodian's failure to respond to the GRC's request for additional information regarding the special service charge, 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, this 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.

Interim Order Rendered by the
Government Records Council
On The 26th Day of September, 2007

Vincent P. Maltese, Chairman
Government Records Council

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

David Fleisher, Secretary
Government Records Council

Decision Distribution Date: October 2, 2007

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 26, 2007 Council Meeting**

**Shirlee Manahan¹
Complainant**

GRC Complaint No. 2006-184

v.

**Salem County²
Custodian of Records**

Records Relevant to Complaint: The Complainant requests that the following records be provided to her electronically:

- 1) Salem County Check Registry and handwritten checks for 2006,
- 2) List of all county employees, and their departments, who have been issued vehicles,
- 3) All e-mails relating to Complainant's complaint regarding the Public Information Office ("PIO") oversight from October 3, 2006 to present,
- 4) A copy of the most recent cell phone and/or Blackberry phone bill for Salem County Freeholders,
- 5) IT Department Budget for 2006 and PIO Human Resources Budget for 2006,
- 6) A list of all bills paid in 2006 by the Salem County Improvement Authority, and
- 7) A list of all county employees issued cell phones or Blackberry phones.

Request Made: October 10, 2006

Response Made: October 12, 2006

Custodian: Earl Gage

GRC Complaint Filed: October 16, 2006

Background

October 10, 2006

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

October 12, 2006

County Counsel's response to the OPRA request on behalf of the Custodian. Counsel addresses the Complainant's request on the second (2) business day following receipt of such request. Counsel addresses the Complainant's OPRA request in numerical order as follows:

¹ No legal representation listed on record.

² Represented by Elaine Voyles, Esq. (Pennsville, NJ).

- 1) County Check Registry and handwritten checks for 2006 will be provided to the Complainant by the County Treasurer and they are not available electronically. The County Treasurer estimates that there are about one hundred (100) pages of records responsive to the Complainant's OPRA request and states that the Complainant will be charged OPRA copying fees, as well as a fee of \$12.05 an hour for staff time spent compiling the information. The total fee for the County Check Registry and handwritten checks for 2006 is \$56.60.
- 2) A list of all county employees and their departments who have been issued vehicles is being compiled and the Complainant will be charged the appropriate OPRA copying fees.³
- 3) Counsel advises the Complainant that although the Complainant was copied on all of the e-mails requested, copies of same can be provided to her upon payment of \$8.50.⁴
- 4) Counsel denies the Complainant access to the most recent cell phone and/or Blackberry phone bill for County Freeholders stating that this information is not available to the Complainant under OPRA.
- 5) Counsel advises the Complainant that the IT Department Budget for 2006 and PIO Human Resources Budget for 2006 are not available electronically. Counsel informs the Complainant that she may review the budgets with staff supervision during normal business hours for a fee of \$12.05 an hour for any review lasting longer than five minutes. Alternatively, Counsel offers a copy of these budgets upon payment of \$25.00.
- 6) Counsel advises the Complainant that the list of all bills paid in 2006 by the Improvement Authority must be requested directly from the Improvement Authority.
- 7) Counsel advises the Complainant that a list of all county employees issued cell phones or Blackberry phones is being compiled and will be provided to the Complainant in a timely fashion. Counsel informs the Complainant that the cost of compiling this information will be in accordance with the County fee schedule.⁵

The County Counsel also attaches the County's Resolution setting fees for staff supervision, duplication, special format, and special service charges relating to governments records.

October 16, 2006

Denial of Access Complaint filed with the Government Records Council ("GRC") with a letter from County Counsel to the Complainant dated October 12, 2006.

The Complainant alleges that she is being unlawfully denied access to the records requested in the medium in which she requested them. The Complainant also declares that County Counsel has not fully responded to the Complainant's OPRA request. The Complainant asserts that Counsel failed to give a date when the records responsive would be available. Instead, the Complainant declares that Counsel stated that the records would be provided in a "timely fashion."

³ Counsel neglected to address whether these records can be transmitted electronically to the Complainant.

⁴ Counsel neglected to address whether these records can be transmitted electronically to the Complainant.

⁵ Counsel neglected to address whether these records can be transmitted electronically to the Complainant.

Furthermore, the Complainant alleges that it is public intimidation to have County Counsel, not the Custodian, respond to a request for public records. The Complainant asserts that the response she received has a chilling effect on OPRA requests in Salem County. The Complainant also asserts that Salem County is a very rural community and electronic access to public records may be the only way some citizens will be able to review records responsive to an OPRA request. The Complainant further alleges that Salem County uses financial cost, as well as intimidation such as having legal counsel respond to OPRA requests, to prohibit access to government records. The Complainant requests that the Custodian be fined under OPRA for knowingly and willfully denying access to the records responsive.

October 20, 2006

Offer of mediation sent to both parties. The Complainant declines mediation of this complaint and requests that the GRC begin a full investigation of this complaint.

October 20, 2006

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

October 30, 2006

Letter from GRC to the Custodian indicating that the GRC requested a Statement of Information from the Custodian on October 20, 2006 and to date has not received a response. Further, the GRC states that if the Statement of Information is not submitted within three (3) business days, the GRC will adjudicate this complaint based solely on the information provided by the Complainant.

November 1, 2006

Letter from Custodian to GRC. The Custodian acknowledges that the Complainant correctly completed the OPRA request forms. The Custodian also states that the County Counsel responded to the Complainant on behalf of the Custodian. The Custodian declares that the Complainant was provided with a copy of a County Resolution which outlines the cost for production and compilation of OPRA requests. The Complainant asserts that County Counsel informed the Complainant that Salem County does not have the capability to transmit the requested records electronically.

The Custodian declares that the phone bills requested have been copied with phone numbers redacted and are ready for the Complainant. The Custodian states that the records responsive are copied and boxed and are waiting for the Complainant to pay for them and pick them up.

Lastly, the Custodian asserts that at all times he has attempted to comply with the Complainant’s OPRA requests.

December 22, 2006

Letter from GRC to Custodian’s Counsel. The GRC again requests the Custodian’s completed SOI. The GRC also requests that the Custodian complete two (2) Special Service Charge Charts. The Custodian is asked to complete one chart regarding the cost being assessed for time spent compiling the information requested by the Complainant. The second chart to be completed establishes the cost of converting the records responsive into the medium requested by the Complainant.

December 29, 2006

Letter from Custodian's Counsel to GRC. Custodian re-submits the SOI.⁶ Custodian alleges that the costs being assessed to the Complainant for fulfilling this OPRA request are in compliance with those set forth in OPRA. Custodian further asserts that should the Complainant still request to receive the records responsive electronically, the Custodian will comply and the Complainant will be charged copying fees and service fees. Counsel also notes that a deposit would be required prior to the records being scanned.

Custodian also supplies the GRC with the following chart:

Question	Custodian's Response
1. The volume, nature, size, number of government records involved.	Approximately 106 pages.
2. The period of time over which the records were received.	January 1, 2006 to October 10, 2006.
3. Whether some or all of the records sought are archived.	Not applicable.
4. The amount of time required for a government employee to locate, retrieve and assemble the documents for copying.	Two hours.
5. The amount of time, level, rate and number, if any required to be expended by government employees to monitor the inspection or examination.	The Complainant requests that the records responsive be provided electronically. Therefore, no monitoring will be required.
6. The amount of time required to return documents to their original storage place.	Not applicable.
7. The size of the agency.	Approximately five-hundred and fifty (550) employees.
8. The number of employees available to accommodate documents requested.	One.
9. The availability of information technology and copying capabilities.	Copying capabilities are readily available. The scanning of a document would have to be done in a different department.

⁶ Although Counsel states that the SOI was previously submitted, the GRC has no record of such submission.

10. What was requested?	IT Department Budget for 2006, PIO Human Resources Budget for 2006, and County Check Registry and hand checks for 2006.
11. The level(s) of skill necessary to accommodate the request.	The County Treasurer would perform this task. ⁷
12. The reason(s) that the agency employed, or intends to employ the particular level(s) of skill above.	The County Treasurer would be responsible for assuring no confidential information is released.
13. A detailed estimate categorizing the hours needed to identify, copy or prepare for inspection, produce and return the requested documents.	Documents would need to be copied or printed, scanned and e-mailed to the Complainant.
14. Who in the agency will perform the work associated with each request?	County Treasurer

March 13, 2007

Letter from GRC to Custodian. The GRC asks the Custodian to complete the Special Service Chart for all of the records requested to more accurately explain the costs being charged to the Complainant. The Custodian must submit the completed chart to the GRC within five (5) business days.

April 1, 2007

Letter from GRC to Custodian.⁸ The GRC again asks the Custodian to complete the Special Service Charge Chart for all of the records requested. The GRC explains to the Custodian that if the Special Service Charge Chart is not completed and returned in three (3) business days, the GRC will adjudicate this complaint with only the information provided on the previously submitted chart, which may not accurately reflect the costs incurred by the County in fulfilling this OPRA request.⁹

Analysis

Whether the Custodian may use an attorney to respond to OPRA requests?

OPRA sets forth the powers and duties of the GRC. Specifically, N.J.S.A. 47:1A-7.b. states that:

“[t]he Government Records Council shall:

- establish an informal mediation program to facilitate the resolution of disputes regarding access to government records;

⁷ The Custodian asserts that it was necessary to have the Treasurer perform redactions because only the Treasurer knows what should be redacted.

⁸ This letter was sent via fax and overnight UPS. This letter was delivered on April 4, 2007 at 10:02 a.m.

⁹ The Custodian failed to respond to the Council’s request for additional information.

- receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian;
 - issue advisory opinions, on its own initiative, as to whether a particular type of record is a government record which is accessible to the public;
 - prepare guidelines and an informational pamphlet for use by records custodians in complying with the law governing access to public records;
 - prepare an informational pamphlet explaining the public's right of access to government records and the methods for resolving disputes regarding access, which records custodians shall make available to persons requesting access to a government record;
 - prepare lists for use by records custodians of the types of records in the possession of public agencies which are government records;
- make training opportunities available for records custodians and other public officers and employees which explain the law governing access to public records; and
- operate an informational website and a toll-free helpline staffed by knowledgeable employees of the council during regular business hours which shall enable any person, including records custodians, to call for information regarding the law governing access to public records and allow any person to request mediation or to file a complaint with the council when access has been denied..." N.J.S.A. 47:1A-7.b.

The Complainant objects to the Custodian's use of an attorney to respond to the Complainant's OPRA request.

In Loigman v. Township of Middletown, GRC Complaint No. 2004-138 (March 2005), the GRC found that OPRA does not give the GRC the authority to regulate how a Custodian utilizes its Counsel in its response to a records request. Pursuant to Loigman and N.J.S.A. 47:1A-7.b., which delineates the Council's powers and duties, the GRC does not have authority to regulate how a Custodian utilizes its Counsel in its response to an OPRA request.

The Custodian may, therefore, use an attorney to respond to an OPRA request and all responses from the Custodian's attorney are attributable to the Custodian.

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:

“If the public agency does not maintain the record in the medium requested, the custodian shall either convert the record to the medium requested or provide a copy in some other meaningful medium. If a request is for a record...require[es] a substantial amount of manipulation ... the agency may charge, in addition to the actual cost of duplication, a special charge that shall be reasonable and shall be based on the cost for any extensive use of information technology, or for the labor cost of personnel providing the service, that is actually incurred by the agency...” (Emphasis added.) N.J.S.A. 47:1A-5.d.

In addition, OPRA provides that:

“Immediate 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 of a government record asserts that part of a particular record is exempt from public access pursuant to [OPRA], the custodian shall delete or excise from a copy of the record that portion which the custodian asserts is exempt from access and shall promptly permit access to the remainder of the record...” (Emphasis added.) N.J.S.A. 47:1A-5.g.

OPRA states that:

“[a]ny officer or employee of a public agency who receives a request for access to a government record shall forward the request to the custodian of the record or direct the requestor to the custodian of the record.” N.J.S.A. 47:1A-5.h.

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 to a government record or deny a request for access to a government record as soon as possible, but not later than seven business days after receiving the request, provided that the record is currently available and not in storage or archived...” (Emphasis added) N.J.S.A.47:1A-5.i.

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

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

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

In the complaint now before the GRC, the Complainant alleges that she is being unlawfully denied access to the records requested in the medium she requested them. The Complainant also declares that County Counsel has provided the Complainant with an incomplete response to this OPRA request. The Complainant asserts that Counsel failed to give a date when the records responsive would be available. Instead, the Complainant declares that Counsel stated that the records would be provided in a “timely fashion.” Counsel initially responded to the Complainant’s OPRA request within the seven (7) business days statutorily mandated under OPRA.

Failure to grant access in the medium requested.

The Complainant requested that the following records be sent to her electronically:

- 1) Salem County Check Registry and handwritten checks for 2006,
- 2) all e-mails relating to Complainant’s complaint regarding the Public Information Office (“PIO”) oversight from October 3, 2006 to present,
- 3) the IT Department Budget for 2006,
- 4) the PIO Human Resources Budget for 2006,
- 5) a list of all county employees and their departments who have been issued vehicles, and
- 6) a list of all county employees issued a cell phone or a Blackberry.

The Custodian responded by granting access to these records in printed form, a different medium than requested.

The Custodian alleges that the requested records are not maintained in the medium requested and therefore they were supplied in paper format which is the method by which they are maintained. Pursuant to N.J.S.A. 47:1A-5.d.

“a Custodian shall permit access to a government record and provide a copy thereof in the medium requested if the public agency maintains the record in that medium. If the public agency does not maintain the record in the medium requested, the custodian shall either convert the record to the medium requested or provide a copy in some other meaningful medium.”

At the time of the response, the Custodian did not provide an explanation why the records could not be converted into an e-mail or the cost of conversion for providing the records in the requested medium as is required under OPRA.

The Custodian has violated N.J.S.A. 47:1A-5.d by not providing the records responsive in the medium requested by the Complainant and therefore has unlawfully denied the Complainant access to the records responsive. The Custodian has failed to bear his burden of proof under N.J.S.A. 47:1A-6 to provide a copy in a meaningful medium.

Failure to provide an adequate response within seven (7) business days.

The Complainant requested a list of all county employees, and their departments, who have been issued vehicles, as well as a list of all county employees issued a cell phone or a Blackberry. The Custodian has certified that these records do not exist. Pursuant to Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super 537 (March 2005), a Custodian is not required to create records which do not otherwise exist in response to records requests. The Custodian herein could have lawfully denied access to the records requested as they did not exist at the time of the request, but instead the Custodian erroneously agreed to create documents in response to this OPRA request. In addition, although the Custodian granted the Complainant access to these records, the Custodian failed to provide the Complainant with a date when these records would be available.

N.J.S.A. 47:1A-5.i. requires that “[u]nless a shorter time period is otherwise provided ... a custodian of a government record shall grant access to a government record or deny a request for access to a government record as soon as possible, but not later than seven business days after receiving the request...”

Because the Custodian failed to inform the Complainant when the requested records would be made available and instead simply told the Complainant that these records would be provided in a “timely fashion,” the Custodian has violated N.J.S.A.47:1A-5.i. and unlawfully denied access.

Failure to indicate specific basis for denial.

The Complainant requested a copy of the most recent cell phone and/or Blackberry phone bill for Salem County Freeholders. Although the Custodian responded by denying the Complainant access to the records requested and stated that this information is not available to the Complainant under OPRA, the Custodian failed to indicate the specific basis of the denial as is statutorily mandated in N.J.S.A. 47:1A-5.g., therefore creating a deemed denial.

In a prior GRC decision, Jeffery Smith v. New Jersey Department of Corrections, GRC Complaint 2004-163 (June 2005), the Council found that the redaction of itemized telephone numbers contained in the cellular telephone billing records provide the need for confidentiality pursuant to North Jersey Newspapers Company v. Passaic County Board of Chosen Freeholders, 127 N.J. 9 (1992). The Council found that the need for confidentiality of the record and the privacy issues involved in the records request implicated weighed heavier than the public’s interest in access to sufficient information to enable the public to understand and evaluate the reasonableness of a public official’s actions.

In the complaint now before the GRC, the Custodian should have granted access to the requested records with the appropriate redactions made pursuant to N.J.S.A. 47:1A-5.g., which states that a “custodian shall delete or excise from a copy of the record that portion which the custodian asserts is exempt from access *and shall promptly permit access to the remainder of the record...*” (Emphasis added.). The Custodian has, therefore, violated N.J.S.A. 47:1A-5.g. and unlawfully denied access.

Failure to grant immediate access to budgets, bills, vouchers, etc.

The Complainant requested the IT Department Budget for 2006 and the PIO Human Resources Budget for 2006. The Custodian informed the Complainant that she may review the budgets with staff supervision during normal business hours for a fee of \$12.05 an hour for any review lasting longer than five minutes. Alternatively, Counsel offered a copy of these budgets upon payment of \$25.00.

The Custodian violated N.J.S.A. 47:1A-5.e by failing to provide immediate access to the requested budgets pursuant to OPRA.

While N.J.S.A. 47:1A-5.e states that “ [i]mmediate access ordinarily shall be granted to budgets, bills, vouchers...” the Complainant’s request for cell phone and Blackberry bills does not fall under this category because of the extensive redactions that need to be made before the requested bills can be released. Therefore, the Custodian has not violated N.J.S.A. 47:1A-5.e by not immediately releasing the requested cell phone and Blackberry bills.

Any employee of a public agency who receives a request for access to a government record shall direct the requestor to the custodian of the record.

The Complainant requested a list of all bills paid in 2006 by the Salem County Improvement Authority. The Custodian advised the Complainant to request these records directly from the Salem County Improvement Authority. The Custodian properly referred the Complainant to the appropriate Custodian pursuant to N.J.S.A. 47:1A-5.h., which states “[a]ny officer or employee of a public agency who receives a request for access to a government record shall forward the request to the custodian of the record or direct the requestor to the custodian of the record.”

Because the Custodian in this complaint is not the custodian of the records requested, the Custodian correctly directed the Complainant to the appropriate custodian of the records requested pursuant to N.J.S.A. 47:1A-5.h.

Whether a special service charge is warranted to fulfill the Complainant’s OPRA request?

OPRA provides that:

“[w]henever the...volume of a government record embodied in the form of printed matter to be...copied pursuant to [OPRA] is such that the record...involves an extraordinary expenditure of time and effort to accommodate the request, the public agency may charge, in addition to the actual cost of duplicating the record, a special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies...The requestor shall have the opportunity to review and object to the charge prior to it being incurred.” (Emphasis added.) N.J.S.A. 47:1A-5.c.

OPRA provides that a custodian shall permit access to a government record and provide a copy thereof in the medium requested if the agency maintains the record in that

medium. If the agency does not maintain the record in the medium requested, the Custodian shall either convert the record to the medium requested or provide a copy in some other meaningful medium. N.J.S.A. 47:1A-5.d. *If a request for a record is in a medium not routinely used by the agency, the agency may charge, in addition to the actual cost of duplication, a special charge that shall be reasonable and shall be based on the labor cost of personnel providing the service that is actually attributable to the agency for the clerical assistance required. Id.* (Emphasis added.)

The GRC established criteria for evaluating the reasonableness of a special service charge assessed pursuant to N.J.S.A. 47:1A-5d. in Janon Fisher v. Division of Law and Public Safety, GRC Complaint No. 2004-55 (December 2004). In order for the GRC to determine whether a special service charge is warranted, the Custodian must provide a response to the following questions:

1. The volume, nature, size, number, of government records involved,
2. The period of time over which the records were received,
3. Whether some or all of the records sought are archived,
4. The amount of time required for a government employee to locate, retrieve and assemble the documents for copying,
5. The amount of time, level, rate and number, if any required to be expended by government employees to monitor the inspection or examination, and,
6. The amount of time required to return documents to their original storage place,
7. The size of the agency,
8. The number of employees available to accommodate documents requests,
9. The availability of information technology and copying capabilities,
10. What was requested,
11. The level(s) of skill necessary to accommodate the request,
12. The reason(s) that the agency employed, or intends to employ, the particular level(s) of skill above,
13. A detailed estimate categorizing the hours needed to identify, copy or prepare for inspection, produce and return the requested documents, and
14. Who in the agency will perform the work associated with each request?

In Courier Post v. Lenape Regional High School District, 360 N.J. Super. 191, 204 (Law Div. 2002), the Appellate Division held that it would be appropriate to calculate the hourly wage rates of the clerical and professional staff involved in satisfying a request and multiplying those figures by the total hours spent, if the Custodian can prove that the professional level of human resource was needed to fulfill the request.

In the complaint now before the GRC, the Custodian initially denied the Complainant access to the records responsive in the medium requested and only agreed to provide the records responsive in paper copies, and sought a special service charge of \$12.05/hr fee established by county resolution for compiling the records responsive to this request in addition to the copying fees allowed at N.J.S.A. 47:1A-5.b. In Joseph Renna v. County of Union, GRC Complaint 2004-136 (November 2004), the Council found that agency policy does not supersede OPRA. Comparably, in the complaint now before the GRC, a County Resolution does not supersede the fees set forth or allowed in OPRA.

After receiving and completing the GRC's Special Service Charge Chart,¹⁰ the Custodian certified that the records responsive to the request for County Check Registry and handwritten checks for 2006, the IT Department Budget for 2006 and the PIO Human Resources Budget for 2006 consist of about one-hundred and six (106) pages and would take two hours for an agency employee to compile the records, make appropriate redactions, scan them and e-mail the records. The Custodian has also certified that the Complainant will still be charged \$12.05 an hour for fulfilling this request in the medium requested.¹¹

The service fees which the Custodian seeks to charge for costs associated with gathering and scanning the records requested by the Complainant appear to be reasonable and based on the actual cost of labor for personnel providing the service. The Custodian is authorized to charge this special service fee because of the large number of records responsive that will need to be redacted, scanned and e-mailed to the Complainant and the time it will take the Custodian to fulfill the records request in the medium requested. However, because there are no physical costs associated with the scanning of documents, such as the cost of paper and toner associated with the physical duplication of the records requested, the Custodian may not charge duplication costs in addition to service charges authorized by N.J.S.A. 47:1A-5.d.

Whether the delay in access to the requested records rises to the level of a knowing and willful violation of OPRA?

OPRA states that:

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

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

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

The Complainant alleges that she is being unlawfully denied access to the records requested in the medium she requested them. The Complainant also declares that the Custodian has not fully responded to the Complainant's OPRA request. The Complainant asserts that the Custodian failed to give a date when the records responsive would be available. Instead, the Complainant declares that Counsel stated that the records would be provided in a “timely fashion.”

¹⁰ The Custodian failed to complete the chart for all records requested.

¹¹ The Custodian initially denied the Complainant access to the records responsive in the medium requested and only agreed to provide the records responsive in paper copies, while charging a special service charge of \$12.05/hr fee for compiling the records responsive to this request

The Custodian declares that the Complainant was provided with a copy of the County Resolution which outlines the cost for production and compilation of OPRA requests. The Custodian asserts that the Complainant was informed that the County does not have the capability to transmit the requested records electronically. The Custodian asserts that at all times the Custodian has attempted to comply with the Complainant's OPRA requests.

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170 at 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (Berg); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86 (App. Div. 1996) at 107).

The evidence of record indicates that the Custodian failed to inform the Complainant of the non-existence of a list of all county employees, and their departments, who have been issued vehicles, and a list of all county employees issued a cell phone or a Blackberry. The Custodian also failed to inform the Complainant when she would receive the records responsive, which the Custodian erroneously agreed to create, resulting in the Custodian violating N.J.S.A. 47:1A-5.i. and unlawfully denying access.

The Custodian also informed the Complainant that none of the records responsive could be transmitted electronically because the Custodian did not have the capability to do so. However, the Custodian later stated that a scanner is available in a different department.

OPRA provides that a custodian shall permit access to a government record and provide a copy thereof in the medium requested if the agency maintains the record in that medium. If the agency does not maintain the record in the medium requested, the Custodian shall either convert the record to the medium requested or provide a copy in some other meaningful medium. N.J.S.A. 47:1A-5.d.

Because the Custodian denied the Complainant's request that the records be sent to her electronically, and neither converted the records into electronic medium nor provided a copy in a meaningful medium as is required under OPRA, the Custodian has violated N.J.S.A. 47:1A-5.d. and unlawfully denied access.

It is concluded that it is possible, based on the Custodian's actions mentioned above, that the Custodian's actions were intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. As such, this 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.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

- 1) Pursuant N.J.S.A. 47:1A-7.b and Loigman v. Township of Middletown, GRC Complaint No. 2004-138 (March 2005), the GRC does not have authority to regulate how a Custodian utilizes its Counsel in its response to an OPRA request. The Custodian may, therefore, use an attorney to respond to an OPRA request.
- 2) Because the Custodian failed to provide the Complainant with the records responsive in the medium requested and failed to provide copies of the requested records in a meaningful medium, the Custodian has violated N.J.S.A. 47:1A-5.d. and unlawfully denied access.
- 3) Because the Custodian's October 12, 2006 response to the Complainant's request for a list of all county employees and their departments who have been issued vehicles, and a list of all county employees issued a cell phone or a Blackberry, failed to inform the Complainant when the records would be made available, or provide a specific basis for denial of access, the Custodian has violated N.J.S.A. 47:1A-5.i. and unlawfully denied access.
- 4) Because the Custodian failed to indicate the specific basis for the denial of a copy of the most recent cell phone and/or Blackberry phone bills for County Freeholders, the Custodian has failed to prove that the denial of access was authorized by law, therefore violating N.J.S.A. 47:1A-6 and unlawfully denying access.
- 5) Additionally, the Custodian should have granted access to the requested cell phone and Blackberry bills for County Freeholders with the appropriate redactions made pursuant to N.J.S.A. 47:1A-5.g., which states that a "custodian shall delete or excise from a copy of the record that portion which the custodian asserts is exempt from access *and shall promptly permit access to the remainder of the record...*" (Emphasis added.). The Custodian has, therefore, violated N.J.S.A. 47:1A-5.g. and unlawfully denied access.
- 6) Because the Custodian failed to immediately provide the Complainant with the requested budgets in the medium requested, the Custodian has violated N.J.S.A. 47:1A-5.d. and N.J.S.A. 47:1A-5.e. and unlawfully denied access.
- 7) Because the Custodian directed the Complainant to the appropriate Custodian of the requested list of all bills paid in 2006 by the Salem County Improvement Authority pursuant to N.J.S.A. 47:1A-5.h., the Custodian has not violated OPRA.
- 8) Because the service fees which the Custodian seeks to charge for costs associated with gathering the large number of records responsive that will need to be redacted, scanned and e-mailed to the Complainant, and the time it will take the Custodian to fulfill the records request in the medium requested, the charge appears to be reasonable and based on the actual cost of labor for personnel providing the service and therefore the Custodian is authorized to charge this special service fee of \$12.05 an hour. However, because there are no physical costs

associated with the scanning of documents, such as the cost of paper and toner associated with the physical duplication of the records requested, the Custodian may not charge duplication costs in addition to service charges authorized by N.J.S.A. 47:1A-5.d.

- 9) The Custodian is to obtain the cost of electronically providing copies of all of the records responsive to the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5, and inform the Complainant of said costs.
- 10) **The Custodian is to provide the information required in #9 above to the Complainant and the Executive Director within five (5) business days after receipt of the Council's decision and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.**
- 11) **The Complainant is to inform the Custodian within five (5) business days after receipt of the cost information whether or not she still wishes to receive the requested documents electronically.**
- 12) Because the Custodian denied the Complainant's request that the records be sent to her electronically, stating that the Custodian did not have the capability to transmit the records electronically, only to later supply the Council with a chart detailing some of the charges the Custodian planned to impose on the Complainant for scanning and e-mailing the records responsive from a different department, as well as the Custodian's failure to respond to the GRC's request for additional information regarding the special service charge, 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, this 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.

Prepared By:

Rebecca A. DeVoe
Case Manager

Approved By:

Catherine Starghill, Esq.
Executive Director

September 19, 2007