



**State of New Jersey**  
**GOVERNMENT RECORDS COUNCIL**

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**FINAL DECISION**

**April 30, 2008 Government Records Council Meeting**

Robert Vessio  
Complainant

Complaint No. 2007-188

v.

NJ Department of Community Affairs,  
Division of Fire Safety  
Custodian of Record

At the April 30, 2008 public meeting, the Government Records Council (“Council”) considered the April 23, 2008 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted to adopt the entirety of said findings and recommendations by majority vote. The Council, therefore, finds that:

1. Based upon the Appellate Division’s decision in New Jersey Builders Association v. New Jersey Council On Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007), the Complainant’s voluminous November 2, 2006 OPRA request, a thirteen (13) paragraph request for numerous records, is not a valid OPRA request because bears no resemblance to the record request envisioned by the Legislature, which is one submitted on a form that "provide[s] space for . . . a brief description of the record sought.” *Id.* at 179.
2. Because the Custodian has certified that fulfillment of the Complainant’s OPRA request would substantially disrupt the agency’s operations, and because the Custodian made an attempt to reasonably accommodate the Complainant’s request but received no response, the Custodian has not unlawfully denied access to the requested records under N.J.S.A. 47:1A-5.c. and N.J.S.A. 47:1A-5.g.
3. The Custodian’s failure to respond in writing to the Complainant’s OPRA request granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, as required by N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i., results in a “deemed” denial of the Complainant’s OPRA request. Kelley v. Township of Rockaway, GRC Complaint No. 2007-176 (March 2007).



4. The Custodian's initial response that the Complainant's request was a duplicate of a previous request to the Complainant's June 22, 2007 request was legally insufficient because the Custodian has a duty to answer each request individually. O'Shea v. Township of West Milford, GRC Complaint No. 2004-17 (April 2005).

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 30<sup>th</sup> Day of April, 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, Vice Chairman & Secretary  
Government Records Council

**Decision Distribution Date: May 12, 2008**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
April 30, 2008 Council Meeting**

**Robert J. Vessio<sup>1</sup>  
Complainant**

**GRC Complaint No. 2007-188**

v.

**NJ Department of Community Affairs,  
Division of Fire Safety<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:**

1. Regulations, laws, and statutes governing the Division of Fire Safety;
2. Title and rank of each person employed in the Division of Fire Safety, by title and rank;
3. N.J.A.C. 5:70 et seq.;
4. The procedure for an appeal of a decision of the Division of Fire Safety;
5. The name, rank and title of each Hearing Coordinator;
6. All fire safety violations from 1986 to 2006 by Division of Fire and Safety for violations of following:
  - a. N.J.A.C. 5:70-3.1 (a)
  - b. F-102.1.1 (1)
  - c. F-102.1.1 (6)
  - d. F-310.5
  - e. F-2103.2
  - f. F-310.2
  - g. F5:70-4.7 (h) 6
7. Regulations pertaining to use of historic locations;
8. All commercial use regulations;
9. All residential use regulations;
10. All regulations and guidelines which conform with the NJ Building Code for Residential and Commercial use;
11. NJ Uniform Construction Code regulations;
12. Records of all OPRA complaints filed by Complainant against the Division of Fire and Safety since 1997 and records of all disciplinary actions filed by Complainant against the Division of Fire and Safety since 1997;
13. N.J.A.C. 5:70-47(g)6.

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<sup>1</sup> No representation listed in the record.

<sup>2</sup> Represented by Julie Cavanaugh, DAG, on behalf of the NJ Attorney General (Trenton, NJ).

**Request Made:** June 22, 2007<sup>3</sup>  
**Response Made:** July 10, 2007  
**Custodian:** Sylvester C. Swanson  
**GRC Complaint Filed:** July 31, 2007

### **Background**

#### **June 22, 2007**

Complainant files an OPRA request in the form of a list of the records set forth above attached to an official OPRA request form. Complainant requests the opportunity to inspect the above-referenced records.

#### **July 10, 2006**

Custodian's Response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the eleventh (11<sup>th</sup>) business day following receipt of such request. The Custodian states that he has received a duplicate copy of the Complainant's 2006 OPRA request and refers the Complainant to the GRC's decision in Vessio v. NJ Department of Community Affairs, Division of Fire Safety, GRC Complaint No. 2007-63 (May 2007).<sup>4</sup>

#### **July 12, 2007**

Letter from the Complainant to the Custodian. The Complainant states that he is in receipt of the Custodian's July 10, 2007 memo. The Complainant states that this request is not a duplicate request, but rather a new request dated June 22, 2007. The Complainant further states that he has enclosed a copy of the June 22, 2007 OPRA request. The Complainant also requests the Custodian to advise when the Complainant can set up an appointment to inspect or copy the records responsive to this request.

#### **July 24, 2007**

Custodian's Response to the second submission of the OPRA request. The Custodian states that the Complainant's duplicative OPRA request has been referred to the Attorney's General Office for guidance. The Custodian requests that the Complainant show patience in regard to the Custodian's second response. The Custodian advises that there is an existing Attorney General's opinion (#03-0018) that pertains to fees for on-site inspection, but that the Division of Fire Safety will still allow the Complainant to research copies of its Uniform Fire Code and the Uniform Construction Code at no charge.

#### **July 26, 2007**

Letter from the Custodian to the Complainant. The Custodian states that access has been granted to inspect the following records:

- Item No. 1 – Review of the Uniform Fire Code Book.

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<sup>3</sup> The Complainant's June 22, 2007 OPRA request was received by the Custodian on Saturday, June 23, 2007. The Complainant includes a copy of the certified mail receipt as proof.

<sup>4</sup> The Complainant's June 22, 2007 OPRA request is almost identical to a request made by the Complainant to the New Jersey Department of Community Affairs, Division of Fire Safety on November 2, 2006. That complaint later became the subject of Vessio v. NJ Department of Community Affairs, Division of Fire Safety, GRC Complaint No. 2007-63 (May 2007).

- Item No. 3 – Review of the Uniform Fire Code Book.
- Item No. 4 – Review of the Uniform Fire Code Book.
- Item No. 7 – Review of the Uniform Construction Code Book.
- Item No. 8 – Review of the Uniform Fire Code Book.
- Item No. 9 – Review of the Uniform Fire Code Book
- Item No. 10 – Review of the Uniform Construction Code Book.
- Item No. 11 – Review of the Uniform Construction Code Book.
- Item No. 12 – Review of GRC Complaint No. 2007-63, no disciplinary action taken.

The Custodian states that access has not been granted to the following records because the records do not exist in the format requested or do not exist:

- Item No. 2 – Inspection of Records by title, rank, employed of each person in the division by contract and or certification for the year 2006.
- Item No. 5 – Inspection of Records: of the Hearing Coordinator’s names, rank, title.
- Item No. 13 – Inspection of Records: N.J.A.C. 5:70-47.g.6

The Custodian also states that with regard to Item No. 6 for “Inspection of Record: of all violations for the years (1986-2006) by the Division of Fire and Safety” for the listed violations, pursuant to N.J.S.A. 47:1A-5.g., MAG Entertainment LLC. v. Div. of ABC, 375 N.J. Super. 534, NJ Builders Association v. NJ Council on Affordable Housing, 390 N.J. Super. 166, and Vessio v. NJ Department of Community Affairs, GRC Complaint No. 2007-63 (May 30, 2007), the Custodian requests the Complainant to limit this voluminous request to specific, identifiable files for a manageable, reasonable time period. The Custodian further states that a blanket request for twenty (20) years of records would substantially disrupt the Division of Fire Safety’s operations in that the Division inspects approximately 6,000 life hazard uses annually.

The Custodian further states that twenty (20) years of records would have to be reviewed, redacted and searched to identify the specific violations that the Complainant requested. The Custodian also states that the Complainant’s request is not representative of one that the Legislature intended when OPRA was passed.

The Custodian states that with regard to Item No. 13 for “Inspection of Records of N.J.A.C. 5:70-47.g.6,” the Division of Fire Safety does not maintain any such records.

The Custodian finally states that he awaits a response from the Complainant in reference to request Item No. 6 and also to arrange a time to inspect the records granted. The Custodian also states that the Complainant has the right to appeal the denial of request Items No. 2, No. 5 and No. 6.

### **July 31, 2007**

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

- Complainant's OPRA request dated June 22, 2007.
- Certified Mail receipt showing that the Complainant's request was received on Saturday June 23, 2007.
- Letter from the Custodian to the Complainant dated July 10, 2007.
- Letter from the Complainant to the Custodian dated July 12, 2007.

The Complainant states that he mailed an OPRA request to the New Jersey Department of Community Affairs, Division of Fire Safety on June 22, 2007. The Complainant states that this request was received by the Department on June 23, 2007. The Complainant states that he received a written response on July 10, 2007 from the Custodian stating that this request was a duplicate. The Complainant states that he re-sent the June 22, 2007 OPRA request with a letter stating that this request was not a duplicate, but a new request, on July 12, 2007.

The Complainant states that he was denied access to request Items No. 2, No. 5 and No. 6.

**August 24, 2007**

Offer of Mediation sent to both parties.

**September 5, 2007**

The Custodian agrees to mediate this complaint. The Complainant does not respond to the Offer of Mediation.

**September 17, 2007**

Request for the Statement of Information sent to the Custodian.

**September 21, 2007**

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

- Complainant's OPRA records request dated June 22, 2007.
- Complainant's OPRA records request dated November 2, 2006.
- Letter from the Custodian to the Complainant dated July 10, 2007.
- Letter from the Custodian to the Complainant dated July 24, 2007.
- Letter from the Custodian to the Complainant dated July 26, 2007.
- Custodian's signed Offer of Mediation dated September 5, 2007.

The Custodian certifies that his search for the requested records included discussions with department personnel on this matter.

The Custodian states that the Complainant's OPRA request was received on June 25, 2007. The Custodian states that he was on vacation the week of July 4, 2007 and responded once he returned on July 10, 2007, stating that the Division of Fire Safety had received a duplicate OPRA request from the Complainant. The Custodian states that he received the Complainant's second submission of the June 22, 2007 OPRA request on July 16, 2007. The Custodian states that he responded to the Complainant on July 24,

2007, requesting patience while the Attorney's General Office reviews this request. The Custodian states that he responded to the Complainant on July 26, 2007 as follows:

| Requested Records  | Provided?                                   | Legal Authority for Denial   |
|--|---|--|
| Item No. 1 – Inspection of the regulations by authority, law, statute, department that Division of Fire and Safety comes under.  | Yes – Review of the Uniform Fire Code Book. | Not Applicable.  |
| Item No. 2 – Inspection of each person employed by the Division of Fire and Safety by title, rank, contract or by certification for 2006.  | No  | Record does not exist in the format requested.   |
| Item No. 3 – Inspection of the regulation under the Division of Fire and Safety <u>N.J.A.C. 5:70</u> etc.  | Yes - Review of the Uniform Fire Code Book. | Not Applicable.  |
| Item No. 4 – Inspection of the procedure for appeal under the Division of Fire and Safety.   | Yes - Review of the Uniform Fire Code Book. | Not Applicable.  |
| Item No. 5 – Inspection of the Hearing Coordinator's names, rank, title.   | No  | Record does not exist in the format requested.   |
| Item No. 6 – Inspection of all violations for the years 1986 to 2006 by Division of Fire and Safety for violations of the following:<br>a. <u>N.J.A.C. 5:70-3.1</u> (a)<br>b. F-102.1.1 (1)<br>c. F-102.1.1 (6)<br>d. F-310.5<br>e. F-2103.2<br>f. F-310.2<br>g. F5:70-4.7 (h) 6 | No  | <i>Res Judicata, collateral estoppel</i> , <u>N.J.S.A. 47:1A-5.g.</u> , <u>MAG Entertainment LLC. v. Div. of ABC</u> , 375 N.J. Super. 534 (App. Div. 2005), <u>NJ Builders Association v. NJ Council on Affordable Housing</u> , 390 N.J. Super. 166 (App. Div. 2006), and <u>Vessio v. NJ Department of Community Affairs, Division of Fire Safety</u> , GRC Complaint No. 2007-63 (May 2007). |
| Item No. 7 – Inspection of historic locations use regulations.   | Yes - Review of the Uniform Construction    | Not Applicable.  |

|   |   |  |
|---|---|--|
|   | Code Book.  |  |
| Item No. 8 – Inspection for commercial use regulations.   | Yes - Review of the Uniform Fire Code Book.   | Not Applicable.                                      |
| Item No. 9 – Inspection for residential use regulations.  | Yes - Review of the Uniform Fire Code Book.   | Not Applicable.                                      |
| Item No. 10 – Inspection of Division of Fire and Safety regulations and guidelines requirements which conform with New Jersey’s Building Code for residential/commercial. | Yes - Review of the Uniform Construction Code Book.   | Not Applicable.                                      |
| Item No. 11 – Inspection of New Jersey Uniform Construction code regulations.   | Yes – Review of the Uniform Construction Code Book.   | Not Applicable.                                      |
| Item No. 12 – Inspection of all OPRA and disciplinary complaints filed against the Department of Community Affairs, Division of Fire and Safety.                          | Yes – Review of <u>Vessio v. NJ Department of Community Affairs, Division of Fire Safety, GRC Complaint No. 2007-63 (May 2007).</u> | Not Applicable.                                      |
| Item No. 13 – Inspection of <u>N.J.A.C. 5:70-47 (g) 6.</u>  | No  | Division of Fire and Safety maintains no such files. |

The Custodian states that the Division of Fire Safety intends to rely on the ruling made in Vessio v. NJ Department of Community Affairs, Division of Fire Safety, GRC Complaint No. 2007-63 (May 2007). The Custodian states that the OPRA request subject to this complaint is substantially similar to the request submitted in Vessio, supra. The Custodian asserts that the Complainant’s request does not resemble the one envisioned by the Legislature and that complying with Item No. 6 would substantially disrupt the Division of Fire Safety’s operation.

**Analysis**

**Whether the Complainant’s June 22, 2007 request for records is a valid OPRA request?**

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 states that:

[t]he custodian of a public agency shall adopt a form for the use of any person who requests access to a government record held or controlled by the public agency. The form shall provide space for the name, address, and phone number of the requestor *and a brief description of the government record sought...* N.J.S.A. 47:1A-5.f. (Emphasis added).

OPRA also provides that:

“[a] request for access to a government record shall be in writing and hand-delivered, mailed, transmitted electronically, or otherwise conveyed to the appropriate custodian....If a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency.” N.J.S.A. 47:1A-5.g.

OPRA further provides that:

“a custodian of a government record shall grant access to a government record or deny 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....” 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. A custodian must also release all records responsive to an OPRA request "with certain exceptions." N.J.S.A. 47:1A-1.

The Complainant's thirteen (13) paragraph June 22, 2007 OPRA request sought access to inspect numerous records of the Division of Fire Safety, in some cases spanning a twenty (20) year period. On July 24, 2007, the Custodian granted the Complainant access to inspect the Uniform Fire Code Book for requested Items No.1, No. 3, No. 4, No. 8 and No. 9, and granted access to the Complainant to inspect the Uniform Construction Code Book for requested Item No. 7, No. 10 and No. 11. The Custodian also granted access to request Item No. 12, stating that the Complainant could review Vessio v. NJ Department of Community Affairs, Division of Fire Safety, GRC Complaint No. 2007-63 (May 2007).

With regard to request Item No. 6 of the Complainant's OPRA request, the Custodian requested that the Complainant limit his request to specific identifiable files pursuant to Vessio v. Department of Community Affairs, Division of Fire Safety, GRC Complaint No. 2007-63 (May 2007), MAG Entertainment LLC. v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005) and NJ Builders Association v. NJ Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007). The Custodian further states that "[a] blanket request for twenty (20) years of inspection records would substantially disrupt the Division's operations in that the Division annually inspects approximately 6,000 life hazard uses. All of these files, and possibly twenty (20) years of data within a single file, would have to be reviewed for redaction purposes..." The Custodian attempted to schedule an appointment with the Complainant to inspect these records; however, the Complainant filed this complaint with the GRC instead.

OPRA provides specific procedures for requests and responses. The purpose of OPRA "is to make identifiable [non-exempt] government records 'readily accessible for inspection, copying, or examination.'" MAG, supra, 375 N.J. Super. at 546, quoting N.J.S.A. 47:1A-1. N.J.S.A. 47:1A-5.f. therefore requires custodians of public records to develop forms for OPRA requests that "provide space for . . . a brief description of the government record sought," and N.J.S.A. 47:1A-5.i. requires the custodian to either grant access to the record identified or deny the request "as soon as possible, but not later than seven business days after receiving the request . . . ." "Thus, OPRA requires a party requesting access to a public record to specifically describe the document sought," Gannett New Jersey Partners L.P. v. County of Middlesex, 379 N.J. Super. 205, 211-12 (App. Div. 2005), and it provides that if the custodian of the record "fails to respond within [the time allowed], the failure to respond shall be deemed a denial of the request . . . ." N.J.S.A. 47:1A-5.i. A person denied access may commence litigation, and, if the agency fails to prove that its conduct was authorized by law, the GRC may compel access. N.J.S.A. 47:1A-6.

OPRA identifies the responsibilities of the requestor and the agency relevant to the prompt access the law is designed to provide. The custodian must adopt forms for requests, locate and redact documents, isolate exempt documents, assess fees and means of production, identify requests that require "extraordinary expenditure of time and effort" and warrant assessment of a "service charge," and, when unable to comply with a

request, "indicate the specific basis." New Jersey Builders Association v. New Jersey Council On Affordable Housing, 390 N.J. Super. 166, 179 (App. Div. 2007), citing N.J.S.A. 47:1A-5.a.-j. The requestor must pay the costs of reproduction and submit the request with information that is essential to permit the custodian to comply with its obligations. N.J.S.A. 47:1A-5.f., g., i.

The New Jersey Appellate Division has concluded that OPRA does not contemplate "[w]holesale requests for general information to be analyzed, collated and compiled by the responding government entity." MAG, supra, 375 N.J. Super. at 546-49.

In MAG, the Division of Alcoholic Beverage Control sought to revoke MAG's liquor license for various violations. Trying to establish a defense of selective prosecution, MAG filed an OPRA request with the Division, seeking "**all documents or records ... that the ABC sought, obtained or ordered revocation of a liquor license for the charge of selling alcoholic beverages to an intoxicated person [who], after leaving the licensed premises, was involved in a fatal auto accident,**" and "**all documents or records evidencing that the ABC sought, obtained or ordered suspension of a liquor license exceeding 45 days for charges of lewd or immoral activity.**" *Id.* at 539-40 (Emphasis added). MAG's request did not identify any specific case by name, date, docket number or any other citation, but instead demanded that:

"the documents or records should set forth the persons and/or parties involved, the name and citation of each such case, including unreported cases, the dates of filing, hearing and decision, the tribunals or courts involved, the substance of the allegations made, the docket numbers, the outcome of each matter, the names and addresses of all persons involved, including all witnesses and counsel, and copies of all pleadings, interrogatory answers, case documents, expert reports, transcripts, findings, opinions, orders, case resolutions, published or unpublished case decisions, statutes, rules and regulations." *Id.* at 540.

The court found that this was an invalid OPRA request with which the Custodian was not obligated to comply. *Id.* at 553. The court found it very significant that MAG "failed to identify with any specificity or particularity the governmental records sought. MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past." *Id.* at 549. Because MAG failed to identify any particular documents by name, type of document, date range, or any other identifying characteristic, the custodian would have been required

"to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense....Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted." *Id.*

The court therefore found that “MAG's request was not a proper one for specific documents within OPRA's reach, but rather a broad-based demand for research and analysis, decidedly outside the statutory ambit.” *Id.* at 550.

In MAG, the court observed that “[f]ederal courts, considering the permissible scope of requests for government records under the Freedom of Information Act [FOIA], 5 U.S.C.A. § 522, have repeatedly held that the requested record must 'be reasonably identified as a record not as a general request for data, information and statistics . . . .’” *Id.* at 548 (quoting Krohn v. Dep’t of Justice, 202 U.S. App. D.C. 195, 628 F.2d 195, 198 (D.C. Cir. 1980)). The court therefore held that OPRA does not compel government to review its files and analyze, collate or compile data. *Id.* at 549-50, 868 A.2d 1067; see Gannett, *supra*, 379 N.J. Super. at 211 (questioning whether a "request for 'all information supplied to the U.S. Attorney or other federal authorities' in response to the grand jury subpoenas was a proper request for public records under OPRA”).

As the Appellate Division stated in New Jersey Builders Association,

“There is an obvious connection between the specificity of the request and a custodian's ability to provide a prompt reply. The form for requests adopted by COAH explains the connection by advising the requestor as follows: ‘To expedite the request, be as specific as possible in describing the records being requested.’” *Id.* at 179.

With a voluminous, overly broad, or unclear OPRA request, the seven (7) business-day rule regarding responses to OPRA requests does not afford the custodian time to speculate about what the requestor seeks, research, survey agency employees to determine what they considered or used, or generate new documents that provide information sought. *Id.* For that reason, the requestor's obligation "to specifically describe the document sought," Gannett, *supra*, 379 N.J. Super. at 212, 877 A.2d 330, is essential to the agency's obligation and ability to provide a prompt response. See MAG, *supra*, 375 N.J. Super. at 547, 868 A.2d 1067 (noting that in State ex rel. Dillery v. Icsman, 92 Ohio St. 3d 312, 2001 Ohio 193, 750 N.E.2d 156, 159 (Ohio 2001), an attorney's fee was denied "because the request was improper due to the fact that it failed to identify the desired records with sufficient clarity").

In New Jersey Builders Association, *supra*, the Appellate Division determined that a five-page, thirty-nine paragraph OPRA request for records bore no resemblance to the record request envisioned by the Legislature, which is one submitted on a form that "provide[s] space for . . . a brief description of the record sought." N.J.S.A. 47:1A-5.f. New Jersey Builders Association, 390 N.J. Super. at 179.

The court noted that “[d]escriptions of the sort NJBA gave COAH have been found inadequate by courts of other jurisdictions applying similar statutes, and this court has determined that OPRA should be applied in the same manner. See MAG, *supra*, 375 N.J. Super. at 546-49.” *Id.* at 179. Because NJBA's voluminous request was “so far removed from the type of OPRA request anticipated by the Legislature,” the court concluded that the custodian was not bound by those provisions of OPRA “which require timely response and provide for an award of attorney's fees when such access is denied

and litigation is required. See N.J.S.A. 47:1A-5.i.; N.J.S.A. 47:1A-6.” *Id.* See also, Bent v. Township of Stafford, 381 N.J.Super. 30 (App. Div. 2005)(finding that a five-part request for the “entire file” of his criminal investigation and “the factual basis underlying documented action and advice to third parties” is not a proper request for public records under OPRA, and the information sought is beyond the statutory reach of OPRA); Reda v. Township of West Milford, GRC Complaint No. 2002-58 (January 2003)(dismissing request for annual costs of liability settlements by the Township for each of five years, including costs for "legal defense of said items[,]” because the requestor failed to identify any specific record in the custodian’s possession and holding that OPRA does not require records custodians to conduct research among its records for a requestor and correlate data from various government records).

In the matter before the Council, the Complainant’s June 22, 2007 OPRA request included a request for records pertaining to all fire safety violations from 1986 to 2006 for seven (7) separate violations. The Custodian requested that the Complainant modify his request, because “[a] blanket request for 20 years of inspection records would substantially disrupt the Division’s operations in that the Division annually inspects approximately 6,000 properties. All of these files, and possibly 20 years of data within a single file, would have to be reviewed for redaction purposes...”

Moreover, Complainant’s OPRA request for Items No. 1, No. 8, No. 9, and No. 10 is overly broad because it seeks “all records” relating to a particular subject, without limitation by type of record, date, or any other identifying criteria. Pursuant to the Appellate Division’s decision in MAG, the request for these items is not valid under OPRA because the records being sought are not specifically identified. The Custodian would be required to research his files to ascertain which records might be responsive to the request. Further, request Items No. 4, No. 5, and No. 7 are requests for information and also fail to identify any specific type of record sought. Such requests are also invalid under OPRA pursuant to MAG. Moreover, because OPRA does not require custodians to research files or compile records which do not otherwise exist, the OPRA request for Items No. 2, 5 and 13 constitutes an invalid request for records. See MAG Entertainment LLC v. Div. of ABC, 375 N.J.Super. 534, 546 (App.Div. 2005).

Based upon the Appellate Division’s decision in New Jersey Builders Association v. New Jersey Council On Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) the Complainant’s voluminous June 22, 2007 OPRA request, a thirteen (13) paragraph request including numerous records spanning twenty (20) years, is not a valid OPRA request because it bears no resemblance to the record request envisioned by the Legislature, which is one submitted on a form that "provide[s] space for . . . a brief description of the record sought.” *Id.* at 179. See also Vessio v. Department of Community Affairs, Division of Fire Safety, GRC Complaint No. 2007-63 (May 2007).

However, the Custodian’s failure to respond in writing to the Complainant’s OPRA request granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, as required by N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i., results in a “deemed” denial of the Complainant’s OPRA request. Kelley v. Township of Rockaway, GRC Complaint No. 2007-176 (March 2007). Additionally, the Custodian’s initial response that the

Complainant's request was a duplicate of a previous request to the Complainant's June 22, 2007 request was legally insufficient because the Custodian has a duty to answer each request individually. O'Shea v. Township of West Milford, GRC Complaint No. 2004-17 (April 2005).

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. Based upon the Appellate Division's decision in New Jersey Builders Association v. New Jersey Council On Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007), the Complainant's voluminous November 2, 2006 OPRA request, a thirteen (13) paragraph request for numerous records, is not a valid OPRA request because bears no resemblance to the record request envisioned by the Legislature, which is one submitted on a form that "provide[s] space for . . . a brief description of the record sought." *Id.* at 179.
2. Because the Custodian has certified that fulfillment of the Complainant's OPRA request would substantially disrupt the agency's operations, and because the Custodian made an attempt to reasonably accommodate the Complainant's request but received no response, the Custodian has not unlawfully denied access to the requested records under N.J.S.A. 47:1A-5.c. and N.J.S.A. 47:1A-5.g.
3. The Custodian's failure to respond in writing to the Complainant's OPRA request granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, as required by N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i., results in a "deemed" denial of the Complainant's OPRA request. Kelley v. Township of Rockaway, GRC Complaint No. 2007-176 (March 2007).
4. The Custodian's initial response that the Complainant's request was a duplicate of a previous request to the Complainant's June 22, 2007 request was legally insufficient because the Custodian has a duty to answer each request individually. O'Shea v. Township of West Milford, GRC Complaint No. 2004-17 (April 2005).

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April 23, 2008