



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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FINAL DECISION

March 26, 2008 Government Records Council Meeting

Donald Baldwin
Complainant

Complaint No. 2007-208

v.

NJ Department of Transportation
Custodian of Record

At the March 26, 2008 public meeting, the Government Records Council (“Council”) considered the March 19, 2008 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. Because the Custodian would have had to search approximately 3,697 employees in 10 Assistant Commissioner/Executive Organizations, 25 Divisions, 82 Bureaus, 4 Regional Offices outside of NJDOT headquarters in Trenton, one (1) or more maintenance yards in every county and numerous field offices throughout the state, for “all correspondence,” the Complainant’s June 25, 2007 OPRA request is broad and unclear pursuant to MAG Entertainment, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005). Therefore, the Custodian properly requested that the Complainant narrow his request in order for the Custodian to provide the records responsive. Cody v. Middletown Township Public Schools, GRC Complaint No. 2005-98 (December 2005).
2. Because the Custodian certified that no records responsive to the Complainant’s amended request exist, there is no unlawful denial of access to the requested records. See Pusterhofer v New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).
3. The Complainant failed to achieve the desired result of disclosure of a requested record since no records responsive exist to the Complainant’s amended June 25, 2007 OPRA request. The Complainant, therefore, is not entitled to prevailing party attorney’s fees. See Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006) and NJ Builders Association v. NJ Council on Affordable Housing, 390 N.J. Super. 166, 175 (App. Div. 2007).



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 26th Day of March, 2008

Robin Berg Tabakin, Vice Chairman
Government Records Council

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

Janice Kovach
Government Records Council

Decision Distribution Date: March 31, 2008

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 26, 2008 Council Meeting**

**Donald W. Baldwin¹
Complainant**

GRC Complaint No. 2007-208

v.

**New Jersey Department of Transportation²
Custodian of Records**

Records Relevant to Complaint:

1. All correspondence between Readington Township Committee members and NJDOT from [November 1, 2006] to [June 14, 2007].
2. All correspondence between Readington Township Municipal Clerk and NJDOT from [November 1, 2006] to [June 14, 2007], including letters, memos, e-mails faxes, etc.
3. Any minutes/notes of any meetings between NJDOT and the above Readington Township personnel listed above during the same period.
4. All correspondence between Thomas Thatcher, consultant for Readington Township, and NJDOT from [November 1, 2006] to [June 14, 2007].

Request Made: June 25, 2007

Response Made: June 27, 2007

Custodian: Alfred J. Brenner

GRC Complaint Filed: September 7, 2007

Background

June 25, 2007

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

June 27, 2007

Custodian's Response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the second (2nd) business day following receipt of such request. The Custodian states that the Complainant's request is overly broad and invalid under OPRA pursuant to MAG Entertainment LLC. v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005). The Custodian requests that the Complainant narrow the scope of the request and clarify the specific records being sought by referencing specific projects, studies or types of records.

¹ Represented by Walter M. Luers, Esq. of Law Offices of Walter M. Luers, LLC (Oxford, NJ).

² Represented by DAG Laura Eytan, on behalf of the NJ Attorney General.

June 27, 2007

E-mail from the Complainant to the Custodian. The Complainant states that while he believes that the Custodian's citation to MAG is misplaced, the Complainant will attempt to improve his June 25, 2007 request.

July 4, 2007

Complainant's amended OPRA request. The Complainant rephrases his request for records as follows on an official OPRA request form:

1. Any correspondence between Readington Township Committee members or Municipal Clerk and the Division of Aeronautics, New Jersey Department of Transportation ("NJDOT") from November 1, 2006 to June 14, 2007, including letters, memos, e-mails, faxes, etc.
2. Any minutes or notes of any meetings between the Division of Aeronautics, NJDOT and Readington Township officials or representatives from November 6, 2006 to June 14, 2007 including letters, faxes, e-mails, etc.
3. Any correspondence between Thomas Thatcher, former Director of the Division of Aeronautics, and the current Division of Aeronautics, NJDOT, from November 1, 2006 to June 14, 2007 including letters, memos, faxes, e-mails, etc.

July 5, 2007

E-mail from the Custodian to the Complainant. The Custodian states that he is unable to open the attached document and requests that the Complainant re-send the attachment in some other form.

July 6, 2007

Complainant's July 4, 2007 OPRA request re-sent via facsimile to the Custodian.

July 12, 2007

Custodian's response to the amended OPRA request. The Custodian requests an extension of time to respond to the Complainant's OPRA request. The Custodian asserts that the requested records may not be readily available; therefore, the Custodian may have to reach out to several units in order to fulfill this request.

July 12, 2007

E-mail from Margaret Fisher³ to Grace Slackter of NJDOT, Division of Aeronautics. The Custodian provides the Complainant's July 4, 2007 OPRA request to the Division of Aeronautics in order for a search of records responsive to be conducted.

July 12, 2007

E-mail from the Complainant to the Custodian. The Complainant thanks the Custodian for his e-mail and inquires as to how long an extension will be needed.

³ Margaret Fisher is an employee with NJDOT's OPRA Unit.

July 13, 2007

E-mail from Margaret Fisher to Grace Slackter of NJDOT, Division of Aeronautics. Ms. Fisher states that she has requested an extension of time to respond to the Complainant's OPRA request and the Complainant would like to know how long an extension is needed. Ms. Fisher requests that Ms. Slackter contact Ms. Fisher when Ms. Slackter becomes aware of the approximate date of disclosure.

July 13, 2007

E-mail from Grace Slackter of NJDOT, Division of Aeronautics to Margaret Fisher. Ms. Slackter requests that Ms. Fisher ask the Complainant if request Item No. 3⁴ applies only to Readington Township and Solberg Airport because Thomas Thatcher has been in contact with the Division of Aeronautics on other matters.

July 17, 2007

E-mail from Grace Slackter of NJDOT, Division of Aeronautics to Margaret Fisher. Ms. Slackter inquires whether the Complainant has clarified request Item No. 3.

July 18, 2007

E-mail from the Custodian to the Complainant. The Custodian states that he is following up on a voice message left for the Complainant on July 17, 2007. The Custodian requests that the Complainant contact him in order to discuss Item No. 3 of the Complainant's revised OPRA request.

July 18, 2007

E-mail from the Complainant to the Custodian. The Complainant states that he left two (2) messages for the Custodian and looks forward to speaking with him.

July 23, 2007

Memo from the Complainant to Margaret Fisher. The Complainant states that per his conversation with Margaret Fisher, the names of the members of the Readington Township Committee are listed in order to assist in the search for the requested records. The Complainant states that he expects a response within seven (7) business days.

July 24, 2007

E-mail from Margaret Fisher to Grace Slackter of NJDOT, Division of Aeronautics. Ms. Fisher attaches the Readington Township Committee list in response to Ms. Slackter's request for clarification of request Item No. 3.

July 31, 2007

E-mail from the Custodian to the Complainant. The Custodian states that, based on the time frame and information provided, no records responsive to the Complainant's July 4, 2007 OPRA request exist.

⁴ Ms. Slackter refers to Item No. 3 of the Complainant's rephrased OPRA request as Item No. 4 based on the Complainant's original June 25, 2007 OPRA request, which was refined to three (3) items on July 4, 2007.

September 7, 2007

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

- Letter from Thomas Thatcher to the Commissioner of NJDOT dated May 10, 2007.
- Complainant’s OPRA request dated June 25, 2007.
- E-mail from the Custodian to the Complainant dated June 27, 2007.
- E-mail from the Complainant to the Custodian dated June 27, 2007.
- Complainant’s OPRA request resubmission dated July 4, 2007.
- E-mail from the Custodian to the Complainant dated July 12, 2007.
- E-mail from the Complainant to the Custodian dated July 12, 2007.
- Memo from the Complainant to the Custodian dated July 23, 2007.
- E-mail from the Custodian to the Complainant dated July 31, 2007.

The Complainant states that he submitted an amended OPRA request on July 4, 2007. The Complainant further states that on July 12, 2007, the Custodian requested an extension of time to respond to the Complainant’s request because the records might not be easily accessible. The Complainant states that he e-mailed the Custodian to inquire about the desired length of the Custodian’s extension of time. The Complainant states that on July 23, 2007 he faxed a list of Readington Township Committee members who may have communicated with NJDOT, Division of Aeronautics, per Ms. Fisher’s request. The Complainant further states that the Custodian e-mailed him on July 31, 2007 stating that no records responsive exist.

The Complainant contends that a letter dated May 10, 2007 between NJDOT’s Commissioner, Kris Kolluri, Esq., and Thomas Thatcher, is proof that at least one record responsive to the Complainant’s request exists. The Complainant asserts that NJDOT failed to disclose the May 10, 2007 correspondence that was responsive to request Item No. 3 for “any correspondences between Thomas Thatcher, consultant for Readington Township, and the NJDOT from [November 1, 2006] to [June 14, 2007].”⁵ The Complainant asserts that NJDOT has violated OPRA by conducting a negligent search for the requested records.

The Complainant further contends that the Custodian’s request for clarification of the Complainant’s original June 25, 2007 OPRA request is wrong. The Complainant asserts that his request was for correspondence of one man, Thomas Thatcher, to NJDOT, which is a narrow request and not “over broad and invalid.”

The Complainant requests the following relief:

1. Finding that the Custodian violated [OPRA] by denying access to the requested records.

⁵ The Complainant is referring to his June 25, 2007 request, which was revised and resubmitted on July 4, 2007.

2. Ordering the Custodian to submit a certification describing the efforts the NJDOT made to search for documents responsive to each and every one of Mr. Baldwin's requests.
3. Ordering the Custodian to perform an adequate search for records responsive to each and every one of Mr. Baldwin's requests.
4. Ordering the Custodian to provide copies of the documents located pursuant to requested relief Item No. 3.
5. Finding that [Mr. Baldwin] is a "prevailing party" and awarding a reasonable attorneys fee as provided by N.J.S.A. 47:1A-6.
6. If, after investigation, it is found that the NJDOT knowingly and willfully violated OPRA, an order finding the Custodian for violating OPRA.

September 19, 2007

Offer of Mediation sent to both parties. The Complainant declines mediation.

September 20, 2007

Request for the Statement of Information sent to the Custodian.

September 27, 2007

E-mail from the Custodian's Counsel to the GRC. The Custodian's Counsel requests an extension until October 10, 2007 to submit the Statement of Information.

October 3, 2007

E-mail from the GRC to the Custodian. The GRC grants the Custodian an extension until October 10, 2007 to file the Statement of Information.

October 10, 2007

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

- Complainant's OPRA request dated June 25, 2007.
- E-mail from the Custodian to the Complainant dated June 27, 2007.
- E-mail from the Complainant to the Custodian on June 27, 2007.
- Complainant's OPRA request resubmission dated July 4, 2007.
- E-mail from Custodian to Complainant dated July 5, 2007.
- E-mail from the Custodian to the Complainant dated July 12, 2007.
- E-mail from the Complainant to the Custodian dated July 12, 2007.
- E-mail from Margaret Fisher to Grace Slackter of NJDOT, Division of Aeronautics dated July 12, 2007.
- E-mail from Margaret Fisher to Grace Slackter of NJDOT, Division of Aeronautics dated July 13, 2007.
- E-mail from Grace Slackter of NJDOT, Division of Aeronautics to Margaret Fisher dated July 13, 2007.
- E-mail from Grace Slackter of NJDOT, Division of Aeronautics to Margaret Fisher dated July 17, 2007.
- E-mail from the Custodian to the Complainant dated July 18, 2007.
- E-mail from the Complainant to the Custodian dated July 18, 2007.

- E-mail from the Complainant to Margaret Fisher dated July 23, 2007.
- E-mail from Margaret Fisher to Grace Slackter of NJDOT, Division of Aeronautics dated July 24, 2007.
- E-mail from the Custodian to the Complainant dated July 31, 2007.
- Legal Certification of James L. Badgley, Acting Director of Multimodal Services, Division of Aeronautics, stating that no records responsive exist dated October 9, 2007.

The Custodian certifies that his search consisted of numerous correspondence between the Division of Aeronautics and OPRA Unit staff member Margaret Fisher. The Custodian further certifies that the search included twelve (12) employees of the Division of Aeronautics and a search and review of their files.

The Custodian's Counsel contends that the relief sought by the Complainant is unwarranted. The Custodian's Counsel asserts that the Custodian did not deny access to any records nor did the Custodian violate OPRA. The Custodian's Counsel asserts that the Custodian went out of his way to locate any possible records responsive to the Complainant's request in order for the NJDOT OPRA Unit to fulfill the request.

The Custodian's Counsel states that the Complainant's initial request was for records between unspecified individuals and NJDOT between November 1, 2006 and June 14, 2007. The Custodian's Counsel asserts that the June 25, 2007 OPRA request did not specify a subject matter or department within NJDOT. The Custodian's Counsel contends that attempting to fulfill the Complainant's June 25, 2007 OPRA request would have entailed the OPRA Unit sending a query to approximately 3,697 employees in 10 Assistant Commissioner/ Executive Organizations, 25 Divisions, 82 Bureaus, 4 Regional Offices outside of NJDOT headquarters in Trenton, one (1) or more maintenance yards in every county and numerous field offices throughout the state. The Custodian's Counsel asserts that a search such as this clearly displays an "open-ended search of an agency's files" pursuant to MAG, therefore the Custodian's request for clarification was necessary and legally correct.

The Custodian's Counsel states that the Complainant submitted his amended OPRA request on July 4, 2007, which specifically identified records within the Division of Aeronautics. The Custodian's Counsel states that the Complainant later provided the names of Readington Township Committee members and also wanted to receive correspondence between Thomas Thatcher and the Division of Aeronautics that pertained to Readington Township/ Solberg Airport. The Custodian's Counsel states that according to the requirements of OPRA, the Custodian searched but found no records responsive and notified the Complainant in writing on July 31, 2007.

The Custodian's Counsel asserts that the Custodian did not deny access to any record requested. The Custodian's Counsel contends that the letter obtained by the Complainant by other means was not between the Division of Aeronautics and the Readington Township Committee, Municipal Clerk, Readington Town officials or representatives, or Thomas Thatcher as specified in the Complainant's revised OPRA request. The Custodian's Counsel further contends that the letter does not pertain to

Readington Township/Solberg Airport. The Custodian's Counsel states that the letter is between Thomas Thatcher and Commissioner Kris Kolluri, Esq., and does not specify any of the Readington Township personnel specified on the Complainant's July 4, 2007 amended OPRA request.

The Custodian's Counsel states that the Custodian did not deny access to any requested records, nor did the Custodian act improperly in this matter before the Council. The Custodian's Counsel requests that the Complainant's requested relief be denied and that the GRC dismiss this complaint because a denial of access has not occurred.

December 5, 2007

The Complainant Counsel's Response to the Custodian's SOI. The Complainant's Counsel states that NJDOT goes to great lengths to explain why the May 10, 2007 correspondence between Thomas Thatcher and the current NJDOT Commissioner was not provided to the Complainant. The Complainant's Counsel states that three (3) issues are pertinent to this complaint:

1. Whether the Complainant's initial July 25, 2007 OPRA request was "overbroad" and "invalid"?
2. Whether the letter that NJDOT failed to disclose related to Readington or Solberg Airport (located in Readington)?
3. Whether the GRC has jurisdiction over this matter?

First, the Complainant's Counsel contends that the Complainant's June 25, 2007 OPRA request was not "overbroad" and "invalid." The Complainant's Counsel states that the request contained four (4) subparts and was limited in terms of subject matter and time frame. The Complainant's Counsel states that the subject matter was limited to records between Readington Township and NJDOT exchanged or generated between November 1, 2006 and June 14, 2007. The Complainant's Counsel further states that the request was limited to the correspondence of one (1) individual: Thomas Thatcher.

The Complainant's Counsel asserts that NJDOT appears fully capable of making an "open-ended" search of all employees and offices as asserted by NJDOT, especially one that is limited in scope and time because NJDOT's OPRA Unit has 1.5 staff positions despite having approximately 3,697 employees and receiving 547 individual OPRA requests as of October, 2007.

Second, the Complainant's Counsel contends that the May 10, 2007 correspondence between Thomas Thatcher and NJDOT Commissioner Kris Kolluri, Esq., is in response to a letter from Thomas Thatcher, which is important evidence as to whether NJDOT's response was about Readington or Solberg Airport.

Third, the Complainant's Counsel contends that NJDOT's claim that the GRC has no jurisdiction because "there has been no denial of access" is a mistaken interpretation of N.J.S.A. 47:1A-6. The Complainant's Counsel asserts that GRC jurisdiction brought this complaint against Custodian when NJDOT refused to search for records responsive to the Complainant's June 25, 2007 OPRA request. The Complainant's Counsel finally

asserts that NJDOT's denial of access under N.J.S.A. 47:1A-6 should be investigated by the GRC.

Analysis

Whether the Custodian unlawfully denied access to the requested records?

OPRA provides that:

"...government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions...*" (Emphasis added.) N.J.S.A. 47:1A-1.

Additionally, OPRA defines a government record as:

"... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on file ... or that has been received* in the course of his or its official business ..." (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA also provides that:

"... [i]f the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefore on the request form and promptly return it to the requestor. The custodian shall sign and date the form and provide the requestor with a copy thereof ..." (Emphasis added.) N.J.S.A. 47:1A-5.g.

Additionally, OPRA provides that:

"[u]nless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access ... or deny a request for access ... as soon as possible, but *not later than seven business days after receiving the request ...* In the event a custodian fails to respond within seven business days after receiving a request, *the failure to respond shall be deemed a denial of the request ...*" (Emphasis added.) N.J.S.A. 47:1A-5.i.

OPRA 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.

Pursuant to OPRA, a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5.i. Further, the custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5.g.

In this complaint, the Custodian responded in writing to the Complainant’s June 25, 2007 OPRA request two (2) business days after receipt of the request, asking that the Complainant clarify his OPRA request by narrowing the scope of his request. The Complainant sent an amended OPRA request to the Custodian on July 4, 2007. The Complainant contends that the Custodian erred in seeking clarification of the Complainant’s original June 25, 2007 OPRA request. In Cody v. Middletown Township Public Schools, GRC Complaint No. 2005-98 (December 2005), the Council found that, “...in the case of the records that needed clarification, there was no denial of access to records because the Custodian did properly respond to those requests in writing within the statutorily required seven (7) business days, indicating to the Complainant that clarification was necessary but did not receive a response.”

Additionally, the New Jersey Superior Court has held that “[w]hile OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records “readily accessible for inspection, copying, or examination.” N.J.S.A. 47:1A-1.*” (Emphasis added.) MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super 534, 546 (March 2005). The Court further held that “[u]nder OPRA, *agencies are required to disclose only “identifiable” government records not otherwise exempt ... In short, OPRA does not countenance open-ended searches of an agency’s files.*” (Emphasis added.) *Id.* at 549.

Further, in Bent v. Stafford Police Department, 381 N.J. Super 30, 37 (October 2005)⁶, the Superior Court references MAG in that the Court held that a requestor must specifically describe the document sought because OPRA operates to make identifiable government records “accessible.” “As such, a proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency’s documents.”⁷

In the complaint now before the Council, the Complainant’s original June 25, 2007 OPRA request asks for “all correspondence” between various Readington Township officials or personnel and NJDOT. Because the Custodian would have had to search approximately 3,697 employees in 10 Assistant Commissioner/ Executive Organizations,

⁶ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

⁷ As stated in Bent.

25 Divisions, 82 Bureaus etc. for “all correspondence,” this request is broad and unclear pursuant to MAG, *supra*. Therefore, the Custodian properly requested that the Complainant narrow his request in order for the Custodian to provide the records responsive. Cody, *supra*.

The Complainant also contends that the May 10, 2007 letter he obtained through other means proves that the Custodian conducted a negligent search of NJDOT’s files in relation to the Complainant’s original June 25, 2007 OPRA request. The May 10, 2007 letter that the Complainant obtained is not responsive to the Complainant’s amended July 4, 2007 OPRA request for “[a]ny correspondence between Thomas Thatcher, former Director of Aeronautics and the current Division of Aeronautics, NJDOT.” Because the Custodian certified that no records responsive to the Complainant’s amended request exist, there is no unlawful denial of access to the requested records. See Pusterhofer v New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).

Whether the Complainant is a “prevailing party” entitled to attorney’s fees pursuant to N.J.S.A. 47:1A-6?

OPRA provides that:

“... [i]f it is determined that access has been improperly denied, the court or agency [GRC] head shall order that access be allowed. A requestor who prevails in any proceeding shall be entitled to a reasonable attorney’s fee.” N.J.S.A. 47:1A-6.

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

In the matter before the Council, the Complainant failed to achieve the desired result of disclosure of a requested record since no records responsive exist to the Complainant’s amended June 25, 2007 OPRA request. The Complainant, therefore, is not entitled to prevailing party attorney’s fees. See Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006) and NJ Builders Association v. NJ Council on Affordable Housing, 390 N.J. Super. 166, 175 (App. Div. 2007).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian would have had to search approximately 3,697 employees in 10 Assistant Commissioner/Executive Organizations, 25 Divisions, 82 Bureaus, 4 Regional Offices outside of NJDOT headquarters in Trenton, one (1) or more maintenance yards in every county and numerous field offices throughout the state, for “all correspondence,” the Complainant’s

June 25, 2007 OPRA request is broad and unclear pursuant to MAG Entertainment, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005). Therefore, the Custodian properly requested that the Complainant narrow his request in order for the Custodian to provide the records responsive. Cody v. Middletown Township Public Schools, GRC Complaint No. 2005-98 (December 2005).

2. Because the Custodian certified that no records responsive to the Complainant's amended request exist, there is no unlawful denial of access to the requested records. See Pusterhofer v New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).
3. The Complainant failed to achieve the desired result of disclosure of a requested record since no records responsive exist to the Complainant's amended June 25, 2007 OPRA request. The Complainant, therefore, is not entitled to prevailing party attorney's fees. See Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006) and NJ Builders Association v. NJ Council on Affordable Housing, 390 N.J. Super. 166, 175 (App. Div. 2007).

Prepared By:

Frank F. Caruso
Case Manager

Approved By:

Catherine Starghill, Esq.
Executive Director

March 19, 2008