



**State of New Jersey**  
**GOVERNMENT RECORDS COUNCIL**  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

VINCENT P. MALTESE, Chairman  
COMMISSIONER SUSAN BASS LEVIN  
COMMISSIONER LUCILLE DAVY  
ROBIN BERG TABAKIN  
DAVID FLEISHER  
CATHERINE STARGHILL Esq., Executive Director

Toll Free: 866-850-0511  
Fax: 609-633-6337  
E-mail: [grc@dca.state.nj.us](mailto:grc@dca.state.nj.us)  
Web Address:  
[www.nj.gov/grc](http://www.nj.gov/grc)

**FINAL DECISION**

**May 30, 2007 Government Records Council Meeting**

Robert J. Vessio  
Complainant

Complaint No. 2007-63

v.

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

At the May 30, 2007 public meeting, the Government Records Council (“Council”) considered the May 23, 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. Because the Custodian granted the Complainant access to inspect the Uniform Fire Code Book for requested items #1, 3, 4, 7, 8, and 9, and granted access to the Complainant to inspect the Uniform Construction Code Book for requested item #10 on November 29, 2006, seven (7) days after receipt of the Complainant’s OPRA request, and because the Custodian attempted to schedule an appointment with the Complainant to inspect these records but the Complainant did not respond, the Custodian has granted access to the requested documents pursuant to N.J.S.A. 47:1A-5.i. and has met his burden of proof that access to these records was not unlawfully denied under N.J.S.A. 47:1A-6.
2. Because OPRA does not require custodians to research files or compile records which do not otherwise exist, and because the Custodian denied access to these records within the required seven (7) day period pursuant to N.J.S.A. 47:1A-5.i, the Custodian has met his burden of proof that access to these records was not unlawfully denied pursuant to N.J.S.A. 47:1A-6. See MAG Entertainment v. Div. of ABC, 375 N.J.Super. 534, 546 (App.Div. 2005).
3. 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 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.

4. Based on the Custodian's certification that granting access to all fire safety inspection files from 1986 to 2006 would result in a substantial disruption to the agency's operations, and the Custodian's mediation efforts to reach a "reasonable solution" with the Complainant that accommodates the interests of the requestor and the agency, and the voluminous nature of the Complainant's November 2, 2006 OPRA request, the Custodian's denial of access was authorized by N.J.S.A. 47:1A-5.i. The Custodian has therefore borne his burden of proof that the denial of access was authorized by law. N.J.S.A. 47:1A-6.
5. Because Inspector Robert Kozlowski, who maintained the file of the inspection of Complainant's property, improperly forwarded the Complainant's OPRA request to the Custodian, Inspector Kozlowski has violated N.J.S.A. 47:1A-5.h.

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 May, 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: June 4, 2007**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
May 30, 2007 Council Meeting**

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

**GRC Complaint No. 2007-63**

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;
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.

**Request Made:** November 2, 2006

**Response Made:** November 29, 2006 and December 20, 2006

**Custodian:** Karen Luckie

**GRC Complaint Filed:** January 24, 2007

**Background**

**November 2, 2006**

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

---

<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).

**November 16, 2006**

Custodian receives Complainant's OPRA request.

**November 29, 2006**

Custodian's written response to Complainant's OPRA request, seven (7) business days after receiving the request. Custodian grants Complainant access to inspect the Uniform Fire Code Book for requested items #1, 3, 4, 7, 8, and 9, and grants access to the Complainant to inspect the Uniform Construction Code Book for requested item #10.

Custodian denies access to the Complainant to inspect the records relevant to requested items #2 and #5, asserting that the record does not exist in the format requested.

With regard to requested item #6, the Custodian requests that the Complainant limit his request to specific identifiable files. Custodian asserts that "[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."

**December 11, 2006**

Complainant's letter to Custodian. Complainant amends his November 2, 2006 OPRA request. With regard to requested item #2, Complainant now seeks to inspect the salary of each person employed in the Division of Fire and Safety. With regard to requested item #5, Complainant now seeks information regarding how many people are on the Hearing Board and their names as well as the names of any alternates. With regard to requested item #6, Complainant continues to seek to inspect all fire safety violation records from 1986 to 2006, but proposes that he be permitted to inspect these records a few at a time each week until all of the requested records are reviewed.

**December 20, 2006**

Custodian's letter to Complainant. Custodian reiterates that requested items #2 and #5 are not maintained by the Division of Fire and Safety in the format requested. The Custodian offers to convert these lists but asserts that a special service charge will apply.

The Custodian asserts that records pertaining to requested items #1, 3, 4, 7, 8, 9 and 10 are available for Complainant's inspection.

The Custodian also asserts that the Complainant's request to inspect records pertaining to requested item #6, fire inspection records from 1986 to 2006, is denied because permitting access to these records would substantially disrupt the agency's operations. The Custodian contends that all of these files, including possibly 20 years' worth of data within a single file, would need to be reviewed for redaction purposes prior to granting access.

**January 19, 2007**

The Complainant telephones Custodian to make arrangements to inspect the files relating to fire safety violations from 1986 to 2006. The Custodian informs Complainant

that access to these records is denied for the reasons set forth in the Custodian's December 20, 2006 letter to the Complainant, but that the Custodian can schedule dates for the Complainant to inspect the records to which the Division granted access. The Complainant declines.

**January 24, 2007**

The Complainant files a Denial of Access Complaint. With regard to request for the contracts and/or certifications of each person employed in the Division of Fire Safety, the Complainant alleges that the Custodian denied the Complainant access based on N.J.S.A. 47:1A-10. With regard to the request for names, rank and title of the Hearing Coordinators, the Complainant alleges that the Custodian denied the Complainant access to the requested record. With regard to the request for records of all fire safety violations from 1986 to 2006, the Complainant alleged that the Custodian denied the Complainant access based on the amount of work involved to respond to the request.

**February 13, 2007**

GRC acknowledges receipt of the Complainant's Denial of Access Complaint and sends an Offer of Mediation to the parties.

**February 27, 2007**

GRC sends request for Statement of Information ("SOI") to Custodian.

**February 27, 2007**

By e-mail to the GRC, the Custodian requests an extension of time within which to file the SOI.

**March 5, 2007**

By e-mail from the Custodian to the GRC, the Custodian states that an extension of time to file the SOI is necessary because she has been out of the office due to illness since February 28, 2007.

By e-mail to the Custodian on the same day, the GRC grants an extension of time to March 9, 2007 within which Custodian must file the SOI.

**March 9, 2007**

The Custodian's SOI with the following attachments:

- Complainant's OPRA records request dated November 2, 2006;
- Letter from the Custodian to the Complainant dated November 29, 2006;
- Letter from the Complainant to the Custodian dated December 11, 2006;
- Letter from the Custodian to the Complainant dated December 20, 2006.

The Custodian certifies that the Complainant's OPRA request for fire safety inspections files from 1986 to 2006 was denied because the request would severely impact the day to day operations of the Division of Fire and Safety inasmuch as the Division would be required to redact for confidential information files representing twenty (20) years of investigations. The Custodian also certifies that the Complainant's OPRA request for employee records sorted by title and rank and showing contract or certificate status for 2006 was denied because that information does not exist in a

document format. The Custodian certifies that in order to permit access to such a record, the Division would have to do extensive research to complete new lists and would be required to review the information to redact confidential information. The Custodian also certifies that the records requested pertaining to the names, ranks and titles of the Hearing Coordinators do not exist in a format amenable to review and the Division would have to do extensive research to complete new lists and would be required to review the information to redact confidential information. Finally, the Custodian certifies that the Complainant was unwilling to pay a special service charge related to the compilation of these lists.

The Custodian certifies that the Complainant's November 2, 2006 OPRA request was sent to the wrong office and was not received by the Custodian until November 16, 2006. The Custodian also certifies that the request was not on an official OPRA request form. The Custodian certifies that she contacted the Complainant on November 17, 2006 to inform the Complainant that he had sent the OPRA request to the wrong office and that he needed to submit an OPRA request form. The Custodian certified that she faxed the OPRA request form to the Complainant. The Custodian certifies that Complainant sent the OPRA request form back to her on November 17, 2006.

The Custodian certifies that she did extensive research to ascertain whether she would be able to grant access to the requested records, and the Custodian ultimately found that, because the Division of Fire Safety inspects approximately 6,000 properties annually, Complainant's request to inspect all fire safety violation files from 1986 to 2006 would result in a substantial disruption to the Division's operations because the Division would need to review each file for possible redactions of confidential information.

The Custodian also certifies that Complainant's request for items #2 and #5 were denied because the Division does not have the information in any one document, and the Division would be required to do extensive research to compile, redact and copy the resulting document.

The Custodian certifies that she informed the Complainant of the denials of requested items #2, 5 and 9 by letter dated November 29, 2006. The Custodian further certified that on December 11, 2006, she received a second OPRA request asking for access to items #2, 5 and 9.

The Custodian asserts that she telephoned the Complainant on December 14 asking him to limit his request on item #6. The Custodian asserts that the Complainant refused to do so. The Custodian asserts that she asked the Complainant when he would like to come in and start inspecting those records to which the Division granted access. The Custodian asserts that the Complainant stated he would have to call her back. The Custodian states that by letter dated December 20, 2006, she informed the Complainant that items #2 and #5 are not maintained by the Division of Fire and Safety in the format requested. The Custodian offers to convert these lists but asserts that a special service charge will apply; that records pertaining to items #1, 3, 4, 7, 8, 9 and 10 are available for Complainant's inspection, and that the Complainant's request to inspect records pertaining to requested item #6, fire inspection records from 1986 to 2006, is denied

because permitting access to these records would substantially disrupt the agency's operations. The Custodian contends that all of these files, including possibly 20 years' worth of data within a single file, would need to be reviewed for redaction purposes prior to granting access.

**March 23, 2007**

Complainant agreed to mediation of this Complaint.

**April 3, 2007**

The Custodian agrees to mediation of this Complaint.

**May 15, 2007**

The Custodian requests that the complaint proceed in accordance with the Open Public Records Act.

**May 25, 2007**

The Custodian<sup>3</sup> submits a certification to the Council in which the Custodian certifies that he reviewed the Division of Fire Safety's files and determined that the second page of Complainant's OPRA request, requesting items #11, 12 and 13, was not contained therein. The Custodian certifies that the Division of Fire Safety did not receive the second page of Complainant's OPRA request. The Custodian further certifies that he reviewed the file maintained by Inspector Robert Kozlowski, which file concerns the inspection of the Complainant's property and located the second page of Complainant's OPRA request in that file.

**Analysis**

**Whether the Complainant's November 2, 2006 request for records is a valid OPRA request?**

OPRA states:

[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

---

<sup>3</sup> The Certification was submitted by Sylvester Swanson, a Regulatory Officer in the Department of Community Affairs, Division of Fire Safety. Mr. Swanson is currently acting as the OPRA Custodian. Robert J. Vessio v. NJ Department of Community Affairs, 2007-63 – Findings and Recommendations of the Executive Director



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.

The Complainant’s thirteen (13) paragraph November 2, 2006 request sought access to inspect numerous records of the Division of Fire Safety, in some cases spanning a twenty (20) year period. The Custodian responded in writing to Complainant within seven (7) business days of receiving the request. Custodian granted Complainant access to inspect some of the requested records, denied access to other records, and requested clarification regarding other records. Notably, with regard to requested item #6, the Custodian requested that the Complainant limit his request to specific identifiable files, asserting that “[a] blanket request for 20 years of inspection records would substantially disrupt the Division’s operations in that the Division manually 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.”

On November 29, 2006, seven (7) days after receipt of the Complainant’s OPRA request, the Custodian granted the Complainant access to inspect the Uniform Fire Code Book for requested items #1, 3, 4, 7, 8, and 9, and granted access to the Complainant to inspect the Uniform Construction Code Book for requested item #10. The Custodian attempted to schedule an appointment with the Complainant to inspect these records, however, the Complainant did not respond. The Custodian granted access to the requested documents within the required seven (7) day period pursuant to N.J.S.A. 47:1A-5.i. The Custodian has, therefore, met his burden of proof that access to these records was not unlawfully denied pursuant to N.J.S.A. 47:1A-6.

Also on November 29, 2006, the Custodian denied access to the requested records for items #2 and #5, on the grounds that the Division of Fire Safety does not maintain such records in a format amenable to inspection. The Custodian certified that the Division does not have the information responsive to items #2 and #5 in any one document and the Division would be required to do extensive research to compile, redact and copy the resulting document.

The Custodian certified on May 25, 2007 that the second page of Complainant’s OPRA request, setting forth the Complainant’s request for items #11, 12 and 13, was not received by the Division of Fire Safety and was not contained in its files.

OPRA does not require custodians to research files or compile records which do not otherwise exist. See MAG Entertainment v. Div. of ABC, 375 N.J.Super. 534, 546 (App.Div. 2005). Because the Custodian denied access to the requested records for items #2 and #5 based on their format within the required seven (7) day period required

pursuant to N.J.S.A. 47:1A-5.i, the Custodian has met his burden of proof that access to these records was not unlawfully denied pursuant to N.J.S.A. 47:1A-6.

On November 29, 1006, The Custodian requested that the Complainant limit his request for records responsive to item #6 of the OPRA request to specific identifiable files. In support of this request, the Custodian asserted that “[a] blanket request for 20 years of inspection records would substantially disrupt the Division’s operations in that the Division manually 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.”

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-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 17, 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 November 2, 2006 OPRA request included a request for records pertaining to all fire safety violations from 1986 to 2006. 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 manually 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.” The Complainant proposed inspecting the requested records a few at a time; however, this proposal does not alleviate the burden upon the Custodian to review and redact thousands of records accumulated over a period of twenty (20) years to accommodate the Complainant’s request to inspect these records.

Moreover, the Complainant’s proposal to inspect the requested records a few at a time does not ameliorate the Custodian’s responsibility to respond to the remainder of the Complainant’s November 2, 2006 OPRA request, which includes numerous other records requiring the Custodian’s review and possible redaction.

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 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.

Moreover, OPRA permits a custodian to deny access to a record if a request for access to a government record would substantially disrupt agency operations and if an attempt to reach a reasonable accommodation between the agency and the requestor cannot be reached. N.J.S.A. 47:1A-5.g. Based on the Custodian’s certification that granting access to all fire safety inspection files from 1986 to 2006 would result in a substantial disruption to the agency’s operations, and the Custodian’s mediation efforts to reach a “reasonable solution” with the Complainant that accommodates the interests of the requestor and the agency, and the voluminous nature of the Complainant’s November 2, 2006 OPRA request, the Custodian’s denial of access was authorized by N.J.S.A. 47:1A-5.i. Moreover, the Custodian has certified that the failure to respond to items #11, 12 and 13 occurred because the Division of Fire Safety had not received the second page of the Complainant’s OPRA request. The Custodian has therefore borne his burden of proof that the denial of access was authorized by law. N.J.S.A. 47:1A-6.

However, the Custodian certified that the second page of the Complainant’s OPRA request was found in the file concerning the inspection of Complainant’s property. N.J.S.A. 47:1A-5.h. provides that any employee of a public agency who receives a request for access to a public record shall forward the request to the custodian or direct the requestor to the custodian of record. Because Inspector Robert Kozlowski, who maintained the file of the inspection of Complainant’s property, improperly forwarded the Complainant’s OPRA request to the Custodian, Inspector Kozlowski has violated N.J.S.A. 47:1A-5.h.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian granted the Complainant access to inspect the Uniform Fire Code Book for requested items #1, 3, 4, 7, 8, and 9, and granted access to the Complainant to inspect the Uniform Construction Code Book for requested item #10 on November 29, 2006, seven (7) days after receipt of the Complainant's OPRA request, and because the Custodian attempted to schedule an appointment with the Complainant to inspect these records but the Complainant did not respond, the Custodian has granted access to the requested documents pursuant to N.J.S.A. 47:1A-5.i. and has met his burden of proof that access to these records was not unlawfully denied under N.J.S.A. 47:1A-6.
2. Because OPRA does not require custodians to research files or compile records which do not otherwise exist, and because the Custodian denied access to these records within the required seven (7) day period pursuant to N.J.S.A. 47:1A-5.i., the Custodian has met his burden of proof that access to these records was not unlawfully denied pursuant to N.J.S.A. 47:1A-6. See MAG Entertainment v. Div. of ABC, 375 N.J.Super. 534, 546 (App.Div. 2005).
3. 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 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.
4. Based on the Custodian's certification that granting access to all fire safety inspection files from 1986 to 2006 would result in a substantial disruption to the agency's operations, and the Custodian's mediation efforts to reach a "reasonable solution" with the Complainant that accommodates the interests of the requestor and the agency, and the voluminous nature of the Complainant's November 2, 2006 OPRA request, the Custodian's denial of access was authorized by N.J.S.A. 47:1A-5.i. The Custodian has therefore borne his burden of proof that the denial of access was authorized by law. N.J.S.A. 47:1A-6.
5. Because Inspector Robert Kozlowski, who maintained the file of the inspection of Complainant's property, improperly forwarded the Complainant's OPRA request to the Custodian, Inspector Kozlowski has violated N.J.S.A. 47:1A-5.h.

Prepared By:

Karyn Gordon, Esq.  
In House Counsel

Approved By:

Catherine Starghill, Esq.  
Executive Director

May 23, 2007