



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

JON S. CORZINE  
Governor

CHARLES A. RICHMAN  
Acting Commissioner

**FINAL DECISION**

**December 22, 2009 Government Records Council Meeting**

Donald Gabardi  
Complainant

Complaint No. 2008-259

v.

Voorhees Township Police Department (Camden)  
Custodian of Record

At the December 22, 2009 public meeting, the Government Records Council (“Council”) considered the December 9, 2009 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 Voorhees Police Department employee Debbie Bradshaw failed to forward the OPRA request to the Custodian or direct the Complainant to the Custodian she violated N.J.S.A. 47:1A-5.h. See also Mourning v. Department of Corrections, GRC Complaint No. 2006-75 (August 2006), Vessio v. New Jersey Department of Community Affairs, Division of Fire Safety, GRC Complaint No. 2007-63 (May 2007) and Morgano v. NJ Office of the Public Defender, Essex County, GRC Complaint No. 2008-79 (July 2008).
2. The Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).
3. Because the Custodian certified that the records relevant to the complaint are prohibited from disclosure pursuant to the provisions of N.J.S.A. 2A:4A-60, and because that statute is a law that contains provisions not abrogated by OPRA pursuant to N.J.S.A. 47:1A-9.a., the confidentiality provisions of N.J.S.A. 2A:4A-60 restricts public access to the requested records. Accordingly, the Custodian lawfully denied the Complainant access to the requested records.



4. Although Debbie Bradshaw violated OPRA by failing to forward the OPRA request to the Custodian or direct the Complainant to the Custodian and thereby prevented the Custodian from responding to the Complainant in a timely manner consequently resulting in a “deemed” denial, because Ms. Bradshaw did sign the OPRA form acknowledging receipt of the Complainant’s OPRA request, her failure to promptly forward the OPRA request to the Custodian does not appear to have been purposeful or deliberate. Therefore, it is concluded that employee Debbie Bradshaw’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, Ms. Bradshaw’s failure to forward the OPRA request to the Custodian or direct the Complainant to the Custodian, thereby preventing the Custodian from responding to the Complainant in a timely manner which resulted in a “deemed” denial, appears negligent and heedless since she is an officer or employee of a public agency required to comply with the provisions of OPRA.

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 22<sup>nd</sup> Day of December, 2009

Robin Berg Tabakin, Chair  
Government Records Council

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

Harlynn A. Lack, Secretary  
Government Records Council

**Decision Distribution Date: January 5, 2010**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
December 22, 2009 Council Meeting**

**Donald Gabardi<sup>1</sup>  
Complainant**

**GRC Complaint No. 2008-259**

**v.**

**Voorhees Township Police Department (Camden)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:**

(1) A list of all police calls at 31 Harvard Drive from September 25, 2008 until October 14, 2008 and a copy of the police report for each call.

(2) A copy of the police report for the following call numbers:

08-4130	08-8501
08-4334	08-13639
08-6945	08-18836
08-7494	08-29485
08-7804	08-29756

**Request Made:** October 14, 2008

**Response Made:** November 6, 2008

**Custodian:** Jeanette Schelberg, Municipal Clerk

**GRC Complaint Filed:** November 17, 2008<sup>3</sup>

**Background**

**October 14, 2008**

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. The Complainant delivered his OPRA request to Debbie Bradshaw at the Voorhees Township Police Department.<sup>4</sup>

**November 6, 2008**

Custodian's response to the OPRA request. The Custodian's Counsel responds in writing to the Complainant's OPRA request on the sixteenth (16<sup>th</sup>) business day

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Audra A. Pondish, Esq., of Wade, Long, Wood & Kennedy, LLC (Laurel Springs, NJ).

<sup>3</sup> The GRC received the Denial of Access Complaint on said date.

<sup>4</sup> The agency's OPRA request form has a space for the signature of a municipal official. The form states that when it is signed by the municipal official the form shall constitute a receipt. The form was signed by Debbie Bradshaw and dated October 14, 2008.

following receipt of such request. Counsel states that pursuant to N.J.S.A. 47:1A-5.i., the records requested must generally be provided within seven (7) business days but the provision allows for a brief extension for records not readily available and in need of review. Counsel also informs the Complainant that the Municipal Clerk and police officials found it necessary to consult with Counsel concerning disclosure of the records. Counsel advises the Complainant that an answer to the Complainant's request will be sent to the Complainant on November 11, 2008.

**November 7, 2008**

Letter from the Custodian's Counsel to the Complainant. Counsel informs the Complainant that the records responsive to Item No. 1 of his request are as follows:

<b>DATE</b>	<b>CALL NUMBER<sup>5</sup></b>
September 3, 2008	08-2153 (sic) <sup>6</sup>
September 25, 2008	08-29798
October 2, 2008	08-30538
October 3, 2008	08-30702
October 6, 2008	08-30997
October 8, 2008	08-31226
October 9, 2008	08-31329
October 9, 2008	08-31333
October 11, 2008	08-31512
October 14, 2008	08-31782

The Custodian's Counsel lists all twenty (20) call numbers<sup>7</sup> and informs the Complainant that N.J.S.A. 2A:4A-60 specifically prohibits disclosure of information regarding juveniles without a court order; however, for each of the twenty (20) call numbers Counsel discloses to the Complainant the date, time and reason for the call. Counsel states that three (3) of the records are also exempt from disclosure as criminal investigatory records pursuant to N.J.S.A. 47:1A-1. But Counsel informs the Complainant that because these three (3) matters are investigations in progress pending disposition, N.J.S.A. 47:1A-3.b. requires disclosure of the type of crime, time, location and weapon, if any. Counsel discloses to the Complainant all information required to be disclosed under N.J.S.A. 47:1A-3.b.

**November 17, 2008**

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

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<sup>5</sup> A call number is a sequential number assigned to each call for police service during a given year (usually a calendar year). Here, the first two digits designate the year (2008) followed by the sequential number of the specific call.

<sup>6</sup> This call number appears to be out of sequence or possibly missing a digit.

<sup>7</sup> Counsel determined that ten (10) call numbers were responsive to Item No. 1 of the Complainant's request and the Complainant identified ten (10) additional call numbers in Item No. 2 of his request for a total of twenty (20) call numbers.

- Table listing police calls for 31 Harvard Road between January 25, 2008 and September 25, 2008 containing the call number, reason for the call and action taken; the table is dated October 1, 2008
- Complainant's OPRA request dated October 14, 2008
- Custodian's response to the OPRA request dated November 7, 2008

The Complainant verifies that on October 14, 2008, the request giving rise to this complaint was provided to municipal official Debbie Bradshaw. The Complainant states that his request was denied on November 7, 2008. The Complainant alleges that the address in Voorhees for which he is requesting the records, 31 Harvard Road, is a home for delinquent minors located in a residential neighborhood.

The Complainant does not agree to mediate this complaint.

**December 2, 2008**

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

**December 8, 2008**

E-mail from the Custodian to the GRC. The Custodian states she needs some additional time to prepare the SOI.

**December 8, 2008**

E-mail from the GRC to the Custodian. The GRC grants the Custodian a five (5) business day extension of time to prepare and submit the SOI.

**December 15, 2008**

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated October 14, 2008
- Custodian's response to the OPRA request dated November 6, 2008
- Letter from the Custodian's Counsel to the Complainant dated November 7, 2008

The Custodian certifies that the search for the requested records involved having Police Department personnel search their files and call logs for records responsive to the Complainant's request. The Custodian also certifies that the police minor incident reports may be destroyed after two (2) years and police offense reports regarding criminal investigations of harassment incidents may be destroyed after seven (7) years in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management.

The Custodian certifies that the Complainant's OPRA request was received by the Voorhees Police Department on October 14, 2008, but that the Custodian had no knowledge of the request until it was delivered to her on November 6, 2008. The Custodian avers that after examining the request, she forwarded it to Counsel for action. The Custodian further avers that Counsel responded to the request on November 6, 2008 and November 7, 2008.

The Custodian certifies that the legal reason for denying the Complainant access to police reports concerning criminal investigations is that said records constitute criminal investigatory material and are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1. The Custodian further certifies that pursuant to the instructions of the Camden County Prosecutor the Complainant was denied access to police records concerning juveniles because the records are confidential pursuant to N.J.S.A. 2A:4A-60, unless a court orders disclosure. The Custodian states that for criminal investigations in progress the type of crime, time, location and weapon, if applicable, is disclosed pursuant to N.J.S.A. 47:1A-3.b.

### **Analysis**

**Whether the employee who received the records request violated OPRA by not forwarding the request to the Custodian or directing the requestor to the Custodian pursuant to N.J.S.A. 47:1A-5.h?**

OPRA provides that:

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

In this complaint, the Complainant delivered his OPRA request directly to Voorhees Police Department employee Debbie Bradshaw. The record reveals that Ms. Bradshaw took possession of the OPRA request on October 14, 2008 then signed and dated the request form, thereby endorsing it as a receipt for the Complainant’s request. Thereafter, no action was taken with respect to the Complainant’s OPRA request until the Custodian received it on November 6, 2008, however by that time sixteen (16) business days had passed.

N.J.S.A. 47:1A-5.h provides, and the Council has consistently held, that an employee of a public agency who receives an OPRA request must either direct the requestor to the custodian or forward the requestor’s OPRA request to the custodian. In Mourning v. Department of Corrections, GRC Complaint No. 2006-75 (August 2006), the Council determined that because the employee who received an OPRA request did not forward the request to the custodian or direct the requestor to the custodian the employee violated N.J.S.A. 47:1A-5.h. Similarly, in Vessio v. New Jersey Department of Community Affairs, Division of Fire Safety, GRC Complaint No. 2007-63 (May 2007), the Council found that because an employee improperly forwarded the complainant’s OPRA request to the custodian the employee violated N.J.S.A. 47:1A-5.h. More recently, in Morgano v. NJ Office of the Public Defender, Essex County, GRC Complaint No. 2008-79 (July 2008), the Council determined that a deputy public defender who personally responded to an OPRA request, rather than forwarding the OPRA request to the Custodian or directing the Complainant to the Custodian, violated OPRA.

Accordingly, because Voorhees Police Department employee Debbie Bradshaw failed to timely forward the OPRA request to the Custodian or direct the Complainant to

the Custodian, she violated N.J.S.A. 47:1A-5.h. See Mourning, *supra*, Vessio, *supra*, and Morgano, *supra*.

### **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...[a] government record shall not include...*criminal investigatory records...*” (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA further provides that:

“...where a crime has been reported but no arrest yet made [the following information shall be made available to the public] the type of crime, time, location and type of weapon, if any...” N.J.S.A. 47:1A-3.b.

OPRA states:

“[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 also states:

“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.

Additionally, OPRA provides that:

“[t]he provisions of this act...shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to...regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor ...” N.J.S.A. 47:1A-9.a.

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. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. 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.

OPRA mandates that 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. As also prescribed under N.J.S.A. 47:1A-5.i., a custodian’s failure to respond within the required seven (7) business days results in a “deemed” denial. Further, a custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5.g.<sup>8</sup> Thus, a custodian’s failure to respond in writing to a complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).

Here, Voorhees Township Police Department employee Debbie Bradshaw accepted the Complainant’s OPRA request, but failed to forward the OPRA request to the Custodian in a timely manner. As a result, the Custodian in this matter failed to respond in writing to the Complainant’s OPRA request until the sixteenth (16<sup>th</sup>) business day following receipt thereof.

The Custodian’s Counsel sent a letter to the Complainant dated November 6, 2008, wherein she informed the Complainant that pursuant to N.J.S.A. 47:1A-5.i. the requested records must generally be provided within seven (7) business days but that the provision allows for a brief extension of time for records not readily available and in need

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<sup>8</sup> It is the GRC’s position that a custodian’s written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency’s official OPRA request form, is a valid response pursuant to OPRA.



of review. The Custodian's Counsel misinformed the Complainant when she provided him with her interpretation of N.J.S.A. 47:1A-5.i. This statute, set forth *supra*, states affirmatively that the Custodian must either grant or deny access to the requested record "...not later than seven business days after receiving the request..." The statute provides that the record must be available and not in storage or archived. The statute goes on to state that:

"...[i]f the government record is *in storage or archived*, the requestor shall be so advised within seven business days after the custodian receives the request." (Emphasis added.) N.J.S.A. 47:1A-5.i.

The statute makes it clear that the Custodian must either grant or deny access, or advise the requestor that the requested record is in storage or archived, within seven (7) business days of receiving the request.<sup>9</sup>

Accordingly, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).

The Custodian determined that the records responsive to Item No. 1 of the records relevant to the complaint encompassed a list of call numbers for police calls during a defined period of time, as well as the corresponding police reports. The Custodian determined that the records responsive to Item No. 2 of the records relevant to the complaint were police reports which corresponded to the call numbers the Complainant provided in his request. The Custodian determined that all of the records responsive to the Complainant's request were for police calls at 31 Harvard Drive.

The Custodian disclosed all requested call numbers, along with the date, time and reason for each call but she certified that the confidentiality provisions of N.J.S.A. 2A:4A-60 were applicable to each of the records requested by the Complainant and that she could not disclose the requested police reports that corresponded to the call numbers because N.J.S.A. 2A:4A-60 prohibits disclosure of police records regarding juveniles.

N.J.S.A. 2A:4A-60 provides that:

"(a)...records of law enforcement agencies, pertaining to juveniles charged as a delinquent or found to be part of a juvenile-family crisis, shall be strictly safeguarded from public inspection...(h) Whoever, except as provided by law, knowingly discloses...information concerning a particular juvenile derived from records listed in subsection (a)...shall, upon conviction thereof, be guilty of a disorderly persons offense." (Emphasis added.) N.J.S.A. 2A:4A-60.

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<sup>9</sup> GRC precedent also allows for a custodian to seek clarification of the request and/or request an extension of time; however, the custodian must do so within the statutorily mandated seven (7) business day period. Donald Gabardi v. Voorhees Township Police Department (Camden), 2008-259 – Findings and Recommendations of the Executive Director 7

N.J.S.A. 2A:4A-60 goes on to list numerous exceptions to the prohibition governing disclosure of juvenile information; however, there is nothing in the evidence of record to indicate that any of the exceptions are applicable to the Complainant.

Because the Custodian certified that the records relevant to the complaint are prohibited from disclosure pursuant to the provisions of N.J.S.A. 2A:4A-60, and because that statute is a law that contains provisions not abrogated by OPRA pursuant to N.J.S.A. 47:1A-9.a., the confidentiality provisions of N.J.S.A. 2A:4A-60 restricts public access to the requested records. Accordingly, the Custodian lawfully denied the Complainant access to the requested records.

The Custodian also certified that she informed the Complainant that three (3) of the calls for police service resulted in criminal investigations that are still pending; therefore the Custodian certified that those police reports were further exempt from disclosure because they constitute criminal investigatory records pursuant to N.J.S.A. 47:1A-1.1. However, Counsel also informed the Complainant that because these records constitute investigations in progress pending disposition, Counsel was disclosing information as to the type of crime, time, location and weapon, if any, pursuant to the provisions of N.J.S.A. 47:1A-3.b.

It is unnecessary, however, to analyze whether some of the requested records may be exempt from disclosure as criminal investigatory records pursuant to N.J.S.A. 47:1A-1. because *all* of the requested records are confidential under N.J.S.A. 2A:4A-60 and, as such, are exempt from disclosure.

**Whether employee Debbie Bradshaw’s failure to forward the Complainant’s OPRA request to the Custodian or direct the Complainant to the Custodian, which prevented the Custodian from responding to the Complainant in a timely manner consequently resulting in a “deemed” denial of access, rises to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances?**

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

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

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

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

In the instant complaint, the Complainant delivered his OPRA request to Debbie Bradshaw at the Voorhees Township Police Department on October 14, 2008. The agency's OPRA request form has a space for the signature of a municipal official and states that when it is signed by the municipal official it shall constitute a receipt. Ms. Bradshaw signed and dated the OPRA request form on the date it was delivered by the Complainant; however the Custodian certified that the Custodian had no knowledge of the request until it was delivered to her on November 6, 2008, sixteen (16) business days after it was received by Ms. Bradshaw. Consequently, although the Custodian made sure a response to the OPRA request was immediately sent to the Complainant, the Custodian failed to respond in writing to the Complainant's OPRA request within the statutorily mandated period which resulted in a "deemed" denial of the Complainant's OPRA request. Because Ms. Bradshaw failed to forward the OPRA request to the Custodian or direct the Complainant to the Custodian, she violated N.J.S.A. 47:1A-5.h.

Although Debbie Bradshaw violated OPRA by failing to forward the OPRA request to the Custodian or direct the Complainant to the Custodian and thereby prevented the Custodian from responding to the Complainant in a timely manner which consequently resulted in a "deemed" denial, because Ms. Bradshaw did sign the OPRA form acknowledging receipt of the Complainant's OPRA request, her failure to promptly forward the OPRA request to the Custodian does not appear to have been purposeful or deliberate. Therefore, it is concluded that employee Debbie Bradshaw's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, Ms. Bradshaw's failure to forward the OPRA request to the Custodian or direct the Complainant to the Custodian, thereby preventing the Custodian from responding to the Complainant in a timely manner which resulted in a "deemed" denial, appears negligent and heedless since she is an officer or employee of a public agency required to comply with the provisions of OPRA.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. Because Voorhees Police Department employee Debbie Bradshaw failed to forward the OPRA request to the Custodian or direct the Complainant to the

Custodian she violated N.J.S.A. 47:1A-5.h. See also Mourning v. Department of Corrections, GRC Complaint No. 2006-75 (August 2006), Vessio v. New Jersey Department of Community Affairs, Division of Fire Safety, GRC Complaint No. 2007-63 (May 2007) and Morgano v. NJ Office of the Public Defender, Essex County, GRC Complaint No. 2008-79 (July 2008).

2. The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).
3. Because the Custodian certified that the records relevant to the complaint are prohibited from disclosure pursuant to the provisions of N.J.S.A. 2A:4A-60, and because that statute is a law that contains provisions not abrogated by OPRA pursuant to N.J.S.A. 47:1A-9.a., the confidentiality provisions of N.J.S.A. 2A:4A-60 restricts public access to the requested records. Accordingly, the Custodian lawfully denied the Complainant access to the requested records.
4. Although Debbie Bradshaw violated OPRA by failing to forward the OPRA request to the Custodian or direct the Complainant to the Custodian and thereby prevented the Custodian from responding to the Complainant in a timely manner consequently resulting in a "deemed" denial, because Ms. Bradshaw did sign the OPRA form acknowledging receipt of the Complainant's OPRA request, her failure to promptly forward the OPRA request to the Custodian does not appear to have been purposeful or deliberate. Therefore, it is concluded that employee Debbie Bradshaw's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, Ms. Bradshaw's failure to forward the OPRA request to the Custodian or direct the Complainant to the Custodian, thereby preventing the Custodian from responding to the Complainant in a timely manner which resulted in a "deemed" denial, appears negligent and heedless since she is an officer or employee of a public agency required to comply with the provisions of OPRA.

Prepared By: John E. Stewart  
Case Manager/*In Camera* Attorney

Approved By: Catherine Starghill, Esq.  
Executive Director

December 9, 2009