



**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**

Betty F. Greitzer, Esq.  
Complainant

Complaint No. 2008-279

v.

NJ Department of Law & Public Safety,  
Division of Consumer Affairs  
Custodian of Record

At the December 22, 2009 public meeting, the Government Records Council (“Council”) considered the December 9, 2009 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. Because the Custodian disclosed to the Complainant in a timely manner the credentials of Investigator Joseph Rothstein and simultaneously provided certified confirmation of compliance with the Council’s Interim Order to the Executive Director, the Custodian complied with the provisions of the Council’s November 4, 2009 Interim Order.
2. Although the Custodian failed to prove that denial of access to the credentials issued by the State of New Jersey to the representative of the Bureau was authorized by law, because the Custodian certified that he provided a copy of said credentials to the Complainant in a timely manner in compliance with the Council’s November 4, 2009 Interim Order, it is concluded that the Custodian’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, the Custodian’s unlawful denial of access appears negligent and heedless since he is vested with the legal responsibility of granting and denying access in accordance with the law.

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**

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

**Betty F. Greitzer, Esq.<sup>1</sup>  
Complainant**

**Complaint No. 2008-279**

v.

**NJ Department of Law & Public Safety, Division of Consumer Affairs<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Copies of:

1. All reports, memoranda and all other written documentation maintained by the Kosher Enforcement Bureau, N.J. Division of Consumer Affairs (“Bureau”), arising from or concerning an inspection or investigation said Bureau conducted at the Foodtown Supermarket located at 150 West Court, Long Branch, on or about December 5, 2007.
2. All reports, memoranda and all other written documentation maintained by the Bureau arising from or concerning an inspection or investigation said Bureau conducted at the Foodtown Supermarket located at Raintree Towne Center, Freehold, on or about September 9, 2008.
3. The credentials and identification materials issued by the State of New Jersey to the representatives of the Bureau who conducted the inspections or investigations described in Items #1 and #2.
4. All reports, memoranda notices of violation, consent orders and all other written documentation maintained by the Bureau arising from any enforcement action conducted by the Bureau against any manufacturer, supermarket or other person or entity concerning a product known as Bea’s BBQ Sauce or Bea’s Slammin’ BBQ Sauce.
5. All correspondence received by the Bureau from any office of the Orthodox Union concerning a product known as Bea’s BBQ Sauce or Bea’s Slammin’ BBQ Sauce.
6. All correspondence sent by the Bureau to any office of the Orthodox Union concerning a product known as Bea’s BBQ Sauce or Bea’s Slammin’ BBQ Sauce.
7. All reference materials, including screen captures and newsletters, published by the Orthodox Union and maintained by the Bureau in which reference is made to a product known as Bea’s BBQ Sauce or Bea’s Slammin’ BBQ Sauce.
8. All correspondence sent by the Bureau to Foodtown, 215 Blair Road, Avenel, concerning a product known as Bea’s BBQ Sauce or Bea’s Slammin’ BBQ Sauce.

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

<sup>2</sup> Represented by DAG Steven Flanzman, on behalf of the New Jersey Attorney General.

**Request Made:** November 13, 2008  
**Response Made:** November 24, 2008  
**Custodian:** Robert J. Campanelli  
**GRC Complaint Filed:** December 17, 2008<sup>3</sup>

### **Background**

#### **November 4, 2009**

At the November 4, 2009 public meeting, the Government Records Council (“Council”) considered the October 21, 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, found that:

1. Because N.J.S.A. 47:1A-10. does not operate to make identification credentials issued by the State of New Jersey to Kosher Enforcement Bureau representatives exempt from disclosure, the Custodian has failed to meet the burden of proving that the denial of access to Item #3 of the Complainant’s request was authorized by law pursuant to N.J.S.A. 47:1A-6.
2. Because the Custodian failed to prove that the denial of access was authorized by law, the Custodian shall disclose the records listed as Item #3 of the records relevant to the complaint.
3. **The Custodian shall comply with paragraph #2 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, if any, including a detailed document index explaining the lawful basis for any redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4<sup>4</sup>, to the Executive Director.**
4. Because the Complainant’s request for Item #1, Item #2 and Items #4 through Item #8 is overbroad and constitutes a request for a class of various documents rather than a request for a specific identifiable government record, and because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian has met the burden of proof that access to these records was not unlawfully denied pursuant to the Superior Court decisions in MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) and the Council’s decision in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

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

<sup>4</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

#### **November 6, 2009**

Council's Interim Order distributed to the parties.

#### **November 12, 2009**

Custodian's response to the Council's Interim Order. The Custodian submits a certification to the GRC dated November 10, 2009, wherein the Custodian certifies that in compliance with Paragraph No. 3 of the Council's Interim Order dated November 4, 2009, he is disclosing an unredacted copy of the credentials of Investigator Joseph N. Rothstein.<sup>5</sup> The Custodian further certifies that Investigator Rothstein is an investigator assigned to the Bureau.

### **Analysis**

#### **Whether the Custodian complied with the Council's November 4, 2009 Interim Order?**

In Paragraph No. 3 of the Council's November 4, 2009 Interim Order, the Custodian was ordered to comply with Paragraph No. 2 of said Order, which required the Custodian to disclose to the Complainant the credentials and identification materials issued by the State of New Jersey to the representatives of the Bureau who conducted the inspections or investigations at the Foodtown Supermarkets located at 150 West Court, Long Branch on December 5, 2007 and the Raintree Towne Center, Freehold on September 9, 2008, within five (5) business days from receipt of the Order. The Custodian was also directed to simultaneously provide certified confirmation of compliance to the Executive Director.

The evidence of record reflects that the Order was delivered from the GRC to the Custodian via e-mail on November 6, 2009. Accordingly, the last day for timely compliance was November 16, 2009.<sup>6</sup> The Custodian provided certified confirmation of compliance with the Council's Interim Order to the Executive Director on November 12, 2009.

Therefore, because the Custodian disclosed to the Complainant in a timely manner the credentials of Investigator Joseph Rothstein and simultaneously provided certified confirmation of compliance with the Council's Interim Order to the Executive Director, the Custodian complied with the provisions of the Council's November 4, 2009 Interim Order.

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<sup>5</sup> The Custodian did not indicate on his certification dated November 10, 2009 that he was copying the Complainant; however, he did copy the Complainant on the e-mail to which the certification was attached dated November 12, 2009.

<sup>6</sup> November 11, 2009 was a federal holiday.

**Whether the Custodian’s denial of access to the requested record 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, 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 this matter, although the Custodian failed to prove that the denial of access to the credentials issued by the State of New Jersey to the representative of the Bureau was authorized by law, because the Custodian certified that he provided a copy of said credentials to the Complainant in a timely manner in compliance with the Council’s November 4, 2009 Interim Order, it is concluded that the Custodian’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, the Custodian’s unlawful denial of access appears negligent and heedless since he is vested with the legal responsibility of granting and denying access in accordance with the law.

## Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian disclosed to the Complainant in a timely manner the credentials of Investigator Joseph Rothstein and simultaneously provided certified confirmation of compliance with the Council's Interim Order to the Executive Director, the Custodian complied with the provisions of the Council's November 4, 2009 Interim Order.
  
2. Although the Custodian failed to prove that denial of access to the credentials issued by the State of New Jersey to the representative of the Bureau was authorized by law, because the Custodian certified that he provided a copy of said credentials to the Complainant in a timely manner in compliance with the Council's November 4, 2009 Interim Order, it is concluded that the Custodian'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, the Custodian's unlawful denial of access appears negligent and heedless since he is vested with the legal responsibility of granting and denying access in accordance with the law.

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

Approved By: Catherine Starghill, Esq.  
Executive Director

December 9, 2009



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

INTERIM ORDER

November 4, 2009 Government Records Council Meeting

Betty F. Greitzer, Esq.  
Complainant

Complaint No. 2008-279

v.

NJ Department of Law & Public Safety,  
Division of Consumer Affairs  
Custodian of Record

At the November 4, 2009 public meeting, the Government Records Council ("Council") considered the October 21, 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 N.J.S.A. 47:1A-10. does not operate to make identification credentials issued by the State of New Jersey to Kosher Enforcement Bureau representatives exempt from disclosure, the Custodian has failed to meet the burden of proving that the denial of access to Item #3 of the Complainant's request was authorized by law pursuant to N.J.S.A. 47:1A-6.
2. Because the Custodian failed to prove that the denial of access was authorized by law, the Custodian shall disclose the records listed as Item #3 of the records relevant to the complaint.
3. **The Custodian shall comply with paragraph #2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, if any, including a detailed document index explaining the lawful basis for any redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4<sup>1</sup>, to the Executive Director.**
4. Because the Complainant's request for Item #1, Item #2 and Items #4 through Item #8 is overbroad and constitutes a request for a class of various documents rather than a request for a specific identifiable government record,

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<sup>1</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."





and because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian has met the burden of proof that access to these records was not unlawfully denied pursuant to the Superior Court decisions in MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) and the Council's decision in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the  
Government Records Council  
On The 4<sup>th</sup> Day of November, 2009

Robin Berg Tabakin, Chair  
Government Records Council

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

Janice L. Kovach, Secretary  
Government Records Council

**Decision Distribution Date: November 6, 2009**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
November 4, 2009 Council Meeting**

**Betty F. Greitzer, Esq.<sup>1</sup>  
Complainant**

**Complaint No. 2008-279**

v.

**NJ Department of Law & Public Safety, Division of Consumer Affairs<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Copies of:

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2. All reports, memoranda and all other written documentation maintained by the Bureau arising from or concerning an inspection or investigation said Bureau conducted at the Foodtown Supermarket located at Raintree Towne Center, Freehold, on or about September 9, 2008.
3. The credentials and identification materials issued by the State of New Jersey to the representatives of the Bureau who conducted the inspections or investigations described in Items #1 and #2.
4. All reports, memoranda notices of violation, consent orders and all other written documentation maintained by the Bureau arising from any enforcement action conducted by the Bureau against any manufacturer, supermarket or other person or entity concerning a product known as Bea’s BBQ Sauce or Bea’s Slammin’ BBQ Sauce.
5. All correspondence received by the Bureau from any office of the Orthodox Union concerning a product known as Bea’s BBQ Sauce or Bea’s Slammin’ BBQ Sauce.
6. All correspondence sent by the Bureau to any office of the Orthodox Union concerning a product known as Bea’s BBQ Sauce or Bea’s Slammin’ BBQ Sauce.
7. All reference materials, including screen captures and newsletters, published by the Orthodox Union and maintained by the Bureau in which reference is made to a product known as Bea’s BBQ Sauce or Bea’s Slammin’ BBQ Sauce.
8. All correspondence sent by the Bureau to Foodtown, 215 Blair Road, Avenel, concerning a product known as Bea’s BBQ Sauce or Bea’s Slammin’ BBQ Sauce.

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

<sup>2</sup> Represented by DAG Steven Flanzman, on behalf of the New Jersey Attorney General.  
Betty Greitzer v. NJ Department of Law & Public Safety, Division of Consumer Affairs, 2008-279 – Findings and Recommendations of the Executive Director

**Request Made:** November 13, 2008  
**Response Made:** November 24, 2008  
**Custodian:** Robert J. Campanelli  
**GRC Complaint Filed:** December 17, 2008<sup>3</sup>

## **Background**

### **November 13, 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.

### **November 24, 2008**

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the seventh (7<sup>th</sup>) business day following receipt of such request. The Custodian states that access to the records listed as Item #3 of the request are denied because as personnel records they are exempt from disclosure pursuant to N.J.S.A. 47:1A-10.<sup>4</sup> The Custodian further states that the balance of the records requested are denied because they comprise records that pertain to an investigation in progress.

### **December 17, 2008**

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

- Complainant's OPRA request dated November 13, 2008
- Custodian's response to the OPRA request dated November 24, 2008
- Letter from the Custodian to the Complainant dated November 26, 2008<sup>5</sup>

The Complainant states that she requested the records relevant to this complaint on November 13, 2008 and that the Custodian responded to the request on November 24, 2008, denying the Complainant access to the requested records because (1) the matter is currently open and the records are confidential until the case is closed, and (2) personnel records are protected pursuant to N.J.S.A. 47:1A-10.

The Complainant contends that all of the requested records should have been disclosed to her by the Custodian. The Complainant contends that the Custodian's blanket denial was unlawful under Paff v. N.J. Department of Labor, Board of Review, 379 N.J. Super. 346, 353-354 (App. Div. 2005). Further, the Complainant states that the instant complaint is unique because the Complainant is the attorney for Norkus, which owns several Foodtown Supermarkets, two (2) of which were subject to enforcement action by the Bureau. The Complainant states that the Bureau refused to furnish Norkus with the type of written information other offices of the Division of Consumer Affairs

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

<sup>4</sup> The records are numbered the same in the OPRA request and the Records Relevant to Complaint.

<sup>5</sup> This letter concerns the status of the Bureau's investigation into the use of a kosher symbol on a product displayed in a supermarket and is not relevant to adjudication of the Denial of Access Complaint.

routinely furnish at the time of inspection. The Complainant asserts that it is for this reason that Norkus sought the records listed as Items #1 and #2.

The Complainant states that with respect to Item #3 of the records relevant to the complaint, she did not request personnel information within the plain meaning of that term. The Complainant states that she requested copies of the inspectors' identification badges and any other records that authorize the inspectors to enforce the Kosher Food Consumer Protection Act. The Complainant states privacy information, if any, that appears on the identification credentials can be redacted.

The Complainant contends that Items #4 through #8 of the records relevant to the complaint relate to events that have been concluded. The Complainant states that none of the usual agency investigation issues that might favor denial of access were present with respect to Items #4 through #8. The Complainant speculates that the identity of the confidential informant was probably the party most at interest, the Orthodox Union, therefore the Custodian would not need to protect the informant's identity. The Complainant contends that because the underlying dispute involves the display of consumer merchandise in locations open to the public, the Bureau's investigation would not be compromised. The Complainant also contends that disclosure of the requested records would not be inimical to the public interest pursuant to N.J.S.A. 47:1A-3. The Complainant cites to McClain v. College Hospital, 99 N.J. 346 (1985) in support of her position.

The Complainant agrees to mediate this complaint.

**December 30, 2008**

Offer of Mediation sent to the Custodian.

**January 8, 2009**

Telephone call from the Custodian to the GRC. The Custodian requests, and the GRC grants, a five (5) business day extension of time for the Custodian to decide whether to agree to mediation.

**January 16, 2009**

The Custodian does not agree to mediate this complaint.

**January 20, 2009**

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

**January 22, 2009**

Custodian's SOI. The Custodian submits to the GRC two (2) pages from the SOI. The Custodian completes and returns page two (2) which contains the contact information and page five (5) which contains the certification.

**January 22, 2009**

E-mail from the GRC to the Custodian. The GRC informs the Custodian that the GRC only received page two (2) and page five (5) of the SOI via facsimile transmission. The GRC asks the Custodian if the remainder of the SOI is being submitted to the GRC.

**January 22, 2009**

E-mail from the Custodian to the GRC. The Custodian asks the GRC if it would be acceptable for the Custodian to submit an itemization of documents that the Custodian proposes to provide to the Complainant.

**January 22, 2009**

E-mail from the GRC to the Custodian. The GRC informs the Custodian that the entire completed SOI must be submitted to the GRC, to include the document index pursuant to Paff v. NJ Department of Labor, 392 N.J. Super. 334 (App. Div. 2007).

**January 28, 2009**

Telephone conversation between the GRC and the Custodian. The GRC informs the Custodian the manner in which the GRC expects the SOI to be prepared by the Custodian, including provision of a legal reason for each record, or part thereof, denied. The GRC also informs the Custodian that the document index must be prepared pursuant to Paff, supra. The Custodian requests, and the GRC grants, a five (5) business day extension of time for the Custodian to complete and submit to the GRC the properly completed SOI.

**February 4, 2009**

Letter from GRC to the Custodian. The GRC sends a letter to the Custodian indicating that the GRC provided the Custodian with a request for a SOI on January 20, 2009 and to date has not received a response. Further, the GRC states that if the SOI is not submitted within three (3) business days, the GRC will adjudicate this complaint based solely on the information provided by the Complainant.

**February 11, 2009**

Telephone call from the Complainant to the GRC. The Complainant asks the GRC whether the Custodian submitted a completed SOI to the GRC.

**February 11, 2009<sup>6</sup>**

Facsimile transmission from the GRC to the Complainant. The GRC provides the Complainant with the SOI submitted by the Custodian, which consists of two (2) pages received by the GRC on January 22, 2009.

**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.

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<sup>6</sup> Additional correspondence was submitted by the parties. However, said correspondence is either not relevant to this complaint or restates the facts/assertions already presented to the GRC.  
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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:

“ ...the personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access, except that an individual’s name, title, position, salary, payroll record, length of service, date of separation and the reason therefore, and the amount and type of pension received shall be a government record; personnel or pension records of any individual shall be accessible when required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the United States...” N.J.S.A. 47:1A-10.

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.

Item #3 of the Complainant’s Records Request – The credentials and identification materials issued by the State of New Jersey to the representatives of the Bureau who conducted the inspections or investigations described in Items #1 and #2.<sup>7</sup>

The Custodian denied the Complainant access to the requested records because the Custodian stated that the credentials and identification materials issued to the agency’s inspectors and/or investigators comprise personnel records exempt from disclosure pursuant to N.J.S.A. 47:1A-10.

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<sup>7</sup> Because the Kasher Enforcement Bureau is a relatively small operation, it would not be burdensome for the Custodian to determine which representative(s) conducted the inspection of the Foodtown Supermarkets on December 5, 2007 and September 9, 2008.  
Betty Greitzer v. NJ Department of Law & Public Safety, Division of Consumer Affairs, 2008-279 – Findings and Recommendations of the Executive Director

Issuing credentials and identification material to government agency inspectors and/or investigators, then deeming such identification credentials exempt from public access, defeats the purpose of issuing the credentials in the first place. Identification materials are carried by government employees for the express purpose of corroborating their stated identity. Such credentials not only serve to establish the government worker's authority when necessary, but also to assure interested parties that the holder of such credentials is a *bona fide* government official. Clearly, N.J.S.A. 47:1A-10. is not intended to operate to make identification credentials issued to inspectors and investigators exempt from disclosure. In fact, N.J.S.A. 47:1A-10. provides otherwise by stating "personnel...records of any individual shall be accessible...when disclosure is essential to the performance of official duties..."

Accordingly, because N.J.S.A. 47:1A-10. does not operate to make identification credentials issued by the State of New Jersey to Bureau inspectors and investigators exempt from disclosure, the Custodian has failed to meet the burden of proving that the denial of access to Item #3 of the Complainant's request was authorized by law pursuant to N.J.S.A. 47:1A-6.

Item #1 of the Complainant's Records Request – All reports, memoranda and all other written documentation maintained by the Bureau, arising from or concerning an inspection or investigation said Bureau conducted at the Foodtown Supermarket located at 150 West Court, Long Branch, on or about December 5, 2007.

Item #2 of the Complainant's Records Request – All reports, memoranda and all other written documentation maintained by the Bureau arising from or concerning an inspection or investigation said Bureau conducted at the Foodtown Supermarket located at Raintree Towne Center, Freehold, on or about September 9, 2008.

Item #4 of the Complainant's Records Request – All reports, memoranda notices of violation, consent orders and all other written documentation maintained by the Bureau arising from any enforcement action conducted by the Bureau against any manufacturer, supermarket or other person or entity concerning a product known as Bea's BBQ Sauce or Bea's Slammin' BBQ Sauce.

Item #5 of the Complainant's Records Request – All correspondence received by the Bureau from any office of the Orthodox Union concerning a product known as Bea's BBQ Sauce or Bea's Slammin' BBQ Sauce.

Item #6 of the Complainant's Records Request – All correspondence sent by the Bureau to any office of the Orthodox Union concerning a product known as Bea's BBQ Sauce or Bea's Slammin' BBQ Sauce.

Item #7 of the Complainant's Records Request – All reference materials, including screen captures and newsletters, published by the Orthodox Union and maintained by the Bureau in which reference is made to a product known as Bea's BBQ Sauce or Bea's Slammin' BBQ Sauce.

Item #8 of the Complainant's Records Request – All correspondence sent by the Bureau to Foodtown, 215 Blair Road, Avenel, concerning a product known as Bea's BBQ Sauce or Bea's Slammin' BBQ Sauce.

The Complainant's request for Item #1, Item #2 and Items #4 through Item #8 is overly broad and requires the Custodian to conduct research. The Complainant failed to name a specific identifiable record and instead sought all correspondence or all records without limitation for each item. None of the items were dated or otherwise constrained by time to a given period.

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 (App. Div. 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 (App. Div. 2005),<sup>8</sup> 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."<sup>9</sup>

Additionally, in New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007) the court cited MAG by stating that "...when a request is 'complex' because it fails to specifically identify the documents sought, then that request is not 'encompassed' by OPRA..." The court also quoted N.J.S.A. 47:1A-5.g in that "[i]f 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." The court further stated that "...the Legislature would not expect or want courts to require more persuasive proof of the substantiality of a disruption to agency operations than the agency's need to...generate new records..."

Furthermore, in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009) the Council held that "[b]ecause the Complainant's OPRA requests # 2-5 are not requests for identifiable government records, the requests are invalid and the Custodian has not unlawfully denied access to the requested records pursuant to MAG

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<sup>8</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

<sup>9</sup> As stated in Bent, *supra*.



Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005).”

Therefore, because the Complainant’s request for Item #1, Item #2 and Items #4 through Item #8 is overbroad and constitutes a request for a class of various documents rather than a request for a specific identifiable government record, and because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian has met the burden of proof that access to these records was not unlawfully denied pursuant to the Superior Court decisions in MAG, *supra*, Bent, *supra*, and New Jersey Builders Association, *supra*, and the Council’s decision in Schuler, *supra*.

Further, the Complainant should note that OPRA does not give special statutory access to the requested records because the Complainant is an attorney representing the subject of the requested records. The Complainant should also note that discovery access to government records is governed by the N.J. Court Rules and not OPRA.

**Whether the Custodian’s actions rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances?**

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

**Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. Because N.J.S.A. 47:1A-10. does not operate to make identification credentials issued by the State of New Jersey to Kosher Enforcement Bureau representatives exempt from disclosure, the Custodian has failed to meet the burden of proving that the denial of access to Item #3 of the Complainant’s request was authorized by law pursuant to N.J.S.A. 47:1A-6.
2. Because the Custodian failed to prove that the denial of access was authorized by law, the Custodian shall disclose the records listed as Item #3 of the records relevant to the complaint.
3. **The Custodian shall comply with paragraph #2 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, if any, including a detailed document index explaining the lawful basis for any redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4<sup>10</sup>, to the Executive Director.**

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<sup>10</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."  
Betty Greitzer v. NJ Department of Law & Public Safety, Division of Consumer Affairs, 2008-279 – Findings and Recommendations of the Executive Director 8

4. Because the Complainant's request for Item #1, Item #2 and Items #4 through Item #8 is overbroad and constitutes a request for a class of various documents rather than a request for a specific identifiable government record, and because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian has met the burden of proof that access to these records was not unlawfully denied pursuant to the Superior Court decisions in MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) and the Council's decision in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
  
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

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

Approved By: Catherine Starghill, Esq.  
Executive Director

October 21, 2009