



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

JON S. CORZINE
Governor

JOSEPH V. DORIA, JR.
Commissioner

FINAL DECISION

April 29, 2009 Government Records Council Meeting

Rudy Rosenberg
Complainant

Complaint No. 2008-96

v.

Bergen County Sheriff's Office
Custodian of Record

At the April 29, 2009 public meeting, the Government Records Council ("Council") considered the April 22, 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. Captain Jackson'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). *See also* Grauer v. New Jersey Department of Children and Families, GRC Complaint No. 2006-214 (November 2007).
2. Because Captain Jackson performed an inadequate initial search to locate all records responsive, Captain Jackson unlawfully denied access to the additional records responsive to the Complainant's February 25, 2008 OPRA request, which were provided on April 16, 2008. *See* Schneble v. New Jersey Department of Environmental Protection, GRC Complaint No. 2007-220 (April 2008).
3. Captain Jackson and Lieutenant Moody certified in the Statement of Information that all records responsive were provided to the Complainant on April 9, 2008 and April 16, 2008 and there is no credible evidence in the record to refute the Custodians' certification. Therefore, while Captain Jackson violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i., there was no unlawful denial of access pursuant to Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005).



4. Although Captain Jackson's failure to provide a written response to the Complainant's OPRA request within the statutorily mandated seven (7) business days resulted in a "deemed" denial, because the Complainant was provided with all records responsive on April 9, 2008 and April 16, 2008 and because Captain Jackson and Lieutenant Moody subsequently certified in the Statement of Information that all records responsive had been provided, it is concluded that Captain Jackson'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, Captain Jackson's unlawful "deemed" 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 29th Day of April, 2009

Robin Berg Tabakin, Chairwoman
Government Records Council

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

Janice L. Kovach
Government Records Council

Decision Distribution Date: May 4, 2009

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 29, 2009 Council Meeting**

**Rudy Rosenberg¹
Complainant**

GRC Complaint No. 2008-96

v.

**Bergen County Sheriff's Office²
Custodian of Records**

Records Relevant to Complaint:

February 24, 2008 OPRA request:

All computer records, documents and audio records related to communication between the Bergen County Sheriff's Office ("BCSO"), inclusive of the Bergen County Sheriff's Office Internal Affairs ("BCSOIA"), and the Jersey City Police Department ("JCPD"), inclusive of the Jersey City Police Department Internal Affairs ("JCPDIA"), regarding an arrest warrant executed in September 2003 and the subsequent investigations by the JCPD, inclusive of the JCPDIA.

February 25, 2008 OPRA request:

All records, including computer data, audio recordings and photographs, pertaining to any detention investigation and complaints related directly or indirectly to the Complainant in 2003.

Request Made: February 25, 2008³

Response Made: April 9, 2008

Custodian: Captain Paul Jackson and Lieutenant David Moody

GRC Complaint Filed: May 6, 2008⁴

Background

February 25, 2008

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

March 7, 2008

Captain Paul Jackson ("Capt. Jackson") response to the two (2) OPRA requests. Capt. Jackson responds verbally via telephone to the Complainant's OPRA request on the

¹ No legal representation listed on record.

² Represented by James X. Sattely, Jr., Esq. (Hackensack, NJ).

³ The Complainant submitted both OPRA requests to the Bergen County Sheriff's Office on February 25, 2008.

⁴ The GRC received the Denial of Access Complaint on said date.

seventh (7th) business day following receipt of such request. Capt. Jackson requests that the Complainant telephone him regarding the signatures contained on the Complainant's two (2) OPRA requests.

April 7, 2008

Letter from the Complainant to Captain Paul Jackson. The Complainant states that he has not received a written response from either Capt. Jackson or Lieutenant David Moody ("Lt. Moody") regarding his two (2) OPRA requests. The Complainant states that the Capt. Jackson initially attempted to claim that there was no signature present on the two (2) request forms. The Complainant states that Capt. Jackson later admitted that his claim was false and that there was a signature on the form which was unrecognizable. The Complainant states that Capt. Jackson ultimately admitted that an unrecognizable signature was not a lawful basis for not responding in writing under OPRA.

The Complainant states that he attempted to obtain a date on which Capt. Jackson would provide a response, but was unsuccessful. The Complainant states that any further obstruction to the requested records could result in further legal action.

April 9, 2008

Custodian Counsel's response to the two (2) OPRA requests on the thirty-first (31st) business day after receipt of such requests. Counsel states the following:

February 24, 2008 OPRA request

Counsel states that in response to the Complainant's February 24, 2008 OPRA request, Counsel is enclosing a copy of the following records that have been deemed to be responsive to this request:

- Order to Arrest executed by the Honorable William C. Meehan, P.J.S.C., dated August 22, 2003.
- Letter from the Complainant to Detective George Kellinger of the BCSD dated October 9, 2003.
- Memorandum from Detective Lawrence Goggin to former Sheriff Joel Trella dated October 30, 2003.
- Letter from Lt. Moody to the Complainant dated November 25, 2003.

Counsel states that no other records have been identified as responsive to the Complainant's request. Further, Counsel states that any and all information pertaining to the JCPD would be maintained by that entity and not the BCSO.

Additionally, Counsel states that pursuant to the New Jersey Attorney General's Guidelines, Internal Affairs investigation reports are confidential and shall only be released under the following circumstances:

- In the event that administrative charges have been brought against an officer and a hearing will be held, a copy of those internal investigation reports to be used as evidence in the administrative hearing shall be provided to the officer;

- In the event that the subject officer, agency or governing jurisdiction has been named as a defendant in a lawsuit arising out of the specific incident covered by an internal affairs investigation, a copy of the internal investigation reports may be released to the attorney representing the subject officer, agency or jurisdiction;
- Upon request or at the direction of the County Prosecutor or Attorney General; and
- Upon a court order.

Counsel states that as such, no reports can be released. Counsel states that Lt. Moody previously informed the Complainant as to the outcome of the investigation as is required by the Attorney General guidelines in correspondence dated November 25, 2003.

Counsel states that the records being provided are fully responsive of this request and that the copying cost for five (5) pages of records is \$3.75. Counsel states that once payment has been received, the records responsive will be provided.

February 25, 2008 OPRA request

Counsel states that in response to the Complainant's February 25, 2008 OPRA request, Counsel is enclosing the following records responsive in accordance with OPRA and Executive Order No. 69 (Gov. Whitman, 1997) ("E.O. No. 69"):

- Copy of a Warrant dated March 7, 2003.
- Court Disposition and Inmate Transport Order dated March 23, 2003.
- Copy of Complaint S-2001-000093-0206 dated March 28, 2003.
- Copy of the Order for arrest executed by the Honorable William C. Meehan, P.J.S.C. dated August 22, 2003.
- Copy of a Warrant dated September 8, 2003.
- Copy of a Warrant dated September 8, 2003.
- Copy of a Warrant dated September 8, 2003.
- Copy of the Court Disposition and Inmate Transport Order dated September 8, 2003.
- Copy of the Jail Commitment form dated September 8, 2003.
- Copy of the New Jersey Judiciary Bail Recognizance form dated September 29, 2003.
- Copy of Jail Commitment Form dated November 21, 2003.
- New Jersey Judiciary Bail Recognizance form dated November 22, 2003.
- Copy of the Inmate Commitment Summary Report from the Bergen County Jail for jail commitments dated March 28, 2003, September 6, 2003 and November 21, 2003.
- Copy of a bail form that is undated.

Counsel states that all personal identification information, such as home addresses, social security numbers, dates of birth and photographs have been redacted due to privacy concerns and exemptions under OPRA and E.O. No. 69.

Counsel states that the records being provided are fully responsive of this request and that the copying cost for twenty-two (22) pages of records is \$13.00. Counsel states that once payment has been received, the records responsive will be provided.

April 14, 2008

Letter from the Complainant to the Custodians' Counsel. The Complainant states that he has enclosed a payment of \$13.00 for records responsive to the Complainant's requests. The Complainant states that he believes the BCSO is deliberately and falsely claiming that certain records do not exist.

The Complainant advises the Custodian's Counsel that the BCSO claims the following records do not exist:

1. Intake statements relating to personal property.
2. Computer-based case management records.
3. Written communications or records relating to any other communications between the JCPD and the JCPDIA relating to an incident in Jersey City on September 5, 2003.⁵

The Complainant states that Counsel has stated that Counsel has not reviewed the files to find records and has relied on the word of the Custodians. The Complainant reminds Counsel that the Complainant believes that the BCSO is engaging in hiding evidence of a series of felonies. The Complainant requests that Counsel audit the BCSO files and not rely on the word of the Custodians regarding the existence of the above records.

The Complainant states that the essence of these OPRA requests comes from the Complainant's report to the JCPD of a break-in and robbery in his residence after detectives from the BCSO broke into the Complainant's residence without a search warrant. The Complainant states that pressure from the BCSO caused the JCPD to not investigate the reported robbery. The Complainant states that he subsequently filed complaints with both the BCSOIA and JCPDIA.

The Complainant asserts that Counsel has failed to allege that communications made by BCSO and BCSOIA staff involved in the September 5, 2003 incident to any outside agency, including the JCPDIA, are privileged.

April 16, 2008

Letter from the Custodian's Counsel to the Complainant. Counsel states that he received the Complainant's April 14, 2008 correspondence setting forth additional records that were not previously referenced in Counsel's response to the Complainant dated April 9, 2008.

Counsel states that he received and reviewed additional records provided by the Bergen County Jail and are forwarding the following records to the Complainant for review:

⁵The Complainant cites these three items as the records relevant to the instant complaint.
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- Copies of medical records which cover the period of September 6, 2003 to December 21, 2003.
- Copy of the Inmate Classification Test results with a date of September 8, 2003 for initial classification and November 7, 2003 for first (1st) and second (2nd) review.
- Copy of the Bergen County Jail Property Return receipts dated October 1, 2003 and November 22, 2003.

Counsel states that all personal identification information, such as home addresses, social security numbers, dates of birth and photographs have been redacted due to privacy concerns and exemptions under OPRA. Counsel states that no additional records held at either the Bergen County Sheriff's Department and/or the Bergen County Jail are responsive to the Complainant's two (2) OPRA requests.

Counsel states that the records being provided are fully responsive of this request and that the copying cost for thirty-two (32) pages of records is \$15.50. Counsel states that the records responsive will be provided once payment has been received.

May 6, 2008

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

- Complainant's OPRA request dated February 24, 2008.
- Complainant's OPRA request dated February 25, 2008.
- Letter from the Complainant to the Custodian dated April 14, 2008.

The Complainant states that he submitted two (2) OPRA requests to the Bergen County Sheriff's Office on February 25, 2008. The Complainant contends that Capt. Jackson delayed responding to the Complainant's OPRA requests by asserting that the requests were not signed, which was false.

The Complainant states that he received a response from Counsel on April 9, 2008. The Complainant contends that Counsel failed to address the three (3) records that are the subject of this complaint in his response and denied that the records exist.

July 18, 2008

Offer of Mediation sent to both parties.

July 21, 2008

The Custodian agreed to mediate this complaint. The Complainant did not respond to the Offer of Mediation.

July 31, 2008

Request for the Statement of Information sent to the Custodian.

August 6, 2008

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

- Complainant's OPRA request dated February 24, 2008.
- Complainant's OPRA request dated February 25, 2008.
- Letter from the Complainant to the Captain Paul Jackson dated April 7, 2008.
- Letter from the Custodians' Counsel to the Complainant dated April 9, 2008 (with attachments).
- Letter from the Custodians' Counsel to the Complainant dated April 16, 2008.
- New Jersey Attorney General's Guidelines, Internal Affairs Policy & Procedures.

Counsel states that the Complainant asserts that he did not receive three (3) records which the Complainant felt were responsive to his OPRA requests. Counsel states that both letters to the Complainant dated April 9, 2008 and April 16, 2008 stated that all records responsive to the Complainant's two (2) OPRA requests that were maintained at the BCSO (with the exception of an Internal Affairs report) were provided.

Counsel argues that any delay in the Custodians' response was the result of a question and concern by Capt. Jackson in regards to the signature on the Complainant's request form. Counsel contends that this legitimate concern, coupled with the Complainant's failure to respond to Capt. Jackson's telephone call for nearly three (3) weeks, delayed the processing of the Complainant's OPRA requests.

Certification of Captain Paul Jackson

Capt. Jackson certifies that one of his current duties is responding to OPRA requests received at the Bergen County Jail. The Custodian certifies that he received the Complainant's two (2) OPRA requests postmarked February 27, 2008. Capt. Jackson certifies that based on his concerns about the Complainant's signature on the requests, he telephoned the Complainant on March 7, 2008. Capt. Jackson certifies that the Complainant returned the telephone call on March 26, 2008 and the signature issue was resolved.

Capt. Jackson certifies that he forwarded the February 24, 2008 request to Lt. Moody because the nature of the request was for Internal Affairs records and began gathering records deemed to be responsive to the Complainant's February 25, 2008 OPRA request. Capt. Jackson states that after verbally requesting additional time to respond to the Complainant's request on April 7, 2008, he provided Counsel with all records responsive, who in turn provided the records responsive on April 9, 2008 and April 16, 2008. Capt. Jackson certifies that all records responsive have been provided to the Complainant.

Certification of Lieutenant David Moody

Lt. Moody certifies that one of his duties is responding to OPRA requests received at the BCSO. Lt. Moody certifies that he received the Complainant's February 24, 2008 OPRA request on or about March 27, 2008. Lt. Moody certifies that his search was conducted over several days based on the nature and time period of the request. Lt. Moody avers that he also had to rely on the New Jersey Attorney General's Guidelines to provide guidance as to which records may be exempt from disclosure.

Lt. Moody certifies that he provided all records responsive to Counsel, who subsequently provided a response to the Complainant on April 9, 2008. Lt. Moody certifies that all records responsive were provided to the Complainant. Finally, Lt. Moody avers that the delay in access to the requested records was due to the nature of the records requested, Lt. Moody's search for records responsive and consultation with legal counsel about confidentiality.

Analysis

Whether the Custodian unlawfully denied access to the requested records?

OPRA provides that:

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

Additionally, OPRA defines a government record as:

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

OPRA also provides that:

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

OPRA further provides that:

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

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

“...[t]he public agency shall have the burden of proving that the denial of access is authorized by law...” N.J.S.A. 47:1A-6.

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. 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. 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).

Capt. Jackson certifies in the SOI that he responded verbally via telephone on the seventh (7th) business day after receipt of the Complainant’s two (2) OPRA requests requesting that the Complainant contact him regarding the signatures contained within both forms.

Therefore, Capt. Jackson’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). *See also* Grauer v. New Jersey Department of Children and Families, GRC Complaint No. 2006-214 (November 2007).

Additionally, in Paff v. New Jersey Department of Labor, 392 N.J.Super. 334, the Department of Labor (“DOL”) located an additional record responsive to the Claimant’s June 21, 2003 OPRA request after the GRC requested that DOL conduct one final inspection of its records. The Superior Court subsequently ordered agencies “to which the request is made...to produce sworn statements...setting forth in detail...the search undertaken to satisfy the request...” *Id.* at 341. This holding displays the Court’s placement of importance on a custodian’s duty to perform an adequate search in order to locate all records responsive to an OPRA request.

Further in Schneble v. New Jersey Department of Environmental Protection, GRC Complaint No. 2007-220 (April 2008), the Custodian initially stated that no records responsive to the Complainant’s August 30, 2007 OPRA request existed. The Custodian stated in the SOI that after receipt of the Complainant’s Denial of Access Complaint,

which contained e-mails responsive to the Complainant's request, the Custodian conducted a second search and found records responsive to the Complainant's request. The GRC held that the Custodian had performed an inadequate search and thus unlawfully denied access to the records responsive.

In the instant complaint, Counsel asserts in the SOI that, on April 16, 2008, he provided additional records to the Complainant after receiving the Complainant's April 14, 2008 letter; even after asserting that the records provided to the Complainant on April 9, 2008 were fully responsive to the Complainant's OPRA request. In accordance with Schneble, *supra*, a custodian has a duty to perform an adequate initial search and provide access to all records responsive. Therefore, because Capt. Jackson performed an inadequate initial search to locate all records responsive, Capt. Jackson unlawfully denied access to the additional records responsive to the Complainant's February 25, 2008 OPRA request, which were provided on April 16, 2008. See Schneble, *supra*.

Moreover, in Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005), the Custodian stated in the SOI that one (1) record responsive to the Complainant's March 2, 2005, OPRA request was provided and that no other records responsive existed. The Complainant contended that she believed more records responsive did, in fact, exist. The GRC requested that the Custodian certify as to whether all records responsive had been provided to the Complainant. The Custodian subsequently certified on August 1, 2005 that the record provided to the Complainant was the only record responsive. The GRC held that:

“[t]he Custodian certified that the Complainant was in receipt of all contracts and agreements responsive to the request. The Custodian has met the burden of proving that all records in existence responsive to the request were provided to the Complainant. Therefore there was no unlawful denial of access.”

In this complaint, Counsel acknowledged in his April 16, 2008 letter to the Complainant that after receiving the Complainant's April 14, 2008 letter identifying the three (3) records which are the subject of this complaint, Counsel reviewed and provided additional records. Counsel subsequently then stated that all records responsive in existence had been provided. Additionally, Capt. Jackson and Lt. Moody certified in the SOI that all records responsive were provided to the Complainant on April 9, 2008 and April 16, 2008 and there is no credible evidence in the record to refute the Custodians' certification. Therefore, while Capt. Jackson violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i., there was no unlawful denial of access pursuant to Burns, *supra*.

Whether the Custodian's untimely response 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).

Although Capt. Jackson’s failure to provide a written response to the Complainant’s OPRA request within the statutorily mandated seven (7) business days resulted in a “deemed” denial, because the Complainant was provided with all records responsive on April 9, 2008 and April 16, 2008, and because Capt. Jackson and Lt. Moody subsequently certified in the SOI that all records responsive had been provided, it is concluded that Capt. Jackson’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, Capt. Jackson’s unlawful “deemed” 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. Captain Jackson’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). *See also* Grauer v. New Jersey Department of Children and Families, GRC Complaint No. 2006-214 (November 2007).

2. Because Captain Jackson performed an inadequate initial search to locate all records responsive, Captain Jackson unlawfully denied access to the additional records responsive to the Complainant's February 25, 2008 OPRA request, which were provided on April 16, 2008. See Schneble v. New Jersey Department of Environmental Protection, GRC Complaint No. 2007-220 (April 2008).
3. Captain Jackson and Lieutenant Moody certified in the Statement of Information that all records responsive were provided to the Complainant on April 9, 2008 and April 16, 2008 and there is no credible evidence in the record to refute the Custodians' certification. Therefore, while Captain Jackson violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i., there was no unlawful denial of access pursuant to Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005).
4. Although Captain Jackson's failure to provide a written response to the Complainant's OPRA request within the statutorily mandated seven (7) business days resulted in a "deemed" denial, because the Complainant was provided with all records responsive on April 9, 2008 and April 16, 2008 and because Captain Jackson and Lieutenant Moody subsequently certified in the Statement of Information that all records responsive had been provided, it is concluded that Captain Jackson'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, Captain Jackson's unlawful "deemed" 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: Frank F. Caruso
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

April 22, 2009