



State of New Jersey
GOVERNMENT RECORDS COUNCIL
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Governor

KIM GUADAGNO
Lt. Governor

LORI GRIFA
Commissioner

FINAL DECISION

October 26, 2010 Government Records Council Meeting

Daniel Gatson
Complainant

Complaint No. 2009-239

v.

Borough of Cliffside Park Police Department (Bergen)
Custodian of Record

At the October 26, 2010 public meeting, the Government Records Council (“Council”) considered the September 13, 2010 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 a custodian may not refuse a request for records made under OPRA which is in writing and clearly invokes OPRA, and because the evidence of record indicates that the request form used by the Complainant clearly invoked OPRA, the Custodian’s denial of access to the records requested violates OPRA pursuant to N.J.S.A. 47:1A-5.g. and Renna v. County of Union, 407 N.J. Super. 230 (App. Div. 2009).
2. Because request item No. 1 of the Complainant’s request would require the Custodian to conduct research to locate records containing the requested subject matter, this request item is overly broad and is therefore invalid under OPRA. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
3. The records requested pursuant to request item No. 2 of the Complainant’s OPRA request are exempt from disclosure because they fall within the definition of criminal investigatory records at N.J.S.A. 47:1A-1.1; *see also*, Nance v. Scotch Plains Township Police Department, GRC Complaint No. 2003-125 (January 2005).
4. Although the Custodian violated N.J.S.A. 47:1A-5.g. by improperly refusing the Complainant’s request for records which was in writing and which clearly invoked



OPRA, request item No. 1 of the Complainant's request is invalid because it is overly broad and would require the Custodian to conduct research, and the records requested pursuant to request item No. 2 of the Complainant's request, search warrants, are exempt from disclosure under N.J.S.A. 47:1A-1.1 because they are criminal investigatory records. Therefore, 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.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 26th Day of October, 2010

Robin Berg Tabakin, Chair
Government Records Council

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

Charles A. Richman, Secretary
Government Records Council

Decision Distribution Date: November 1, 2010

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
October 26, 2010 Council Meeting**

**Daniel Gatson¹
Complainant**

GRC Complaint No. 2009-239

v.

**Borough of Cliffside Park Police Department (Bergen)²
Custodian of Records**

Records Relevant to Complaint: Copies of:

1. Any and all statements, reports, e-mails, faxes, texts, and photographs that pertain to Daniel Gatson (“Complainant”).
2. The search warrant issued on July 31, 2001, authorizing the search of the Complainant’s residence at 184 Jersey Ave, Cliffside Park, NJ 07010.

Request Made: July 17, 2009

Response Made: July 27, 2009

Custodian: Donald V. Keane³

GRC Complaint Filed: August 13, 2009⁴

Background

July 17, 2009

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 from the Department of Law and Public Safety.

July 27, 2009

Custodian’s Counsel’s response to the OPRA request. On behalf of the Custodian, Counsel responds in writing to the Complainant’s OPRA request on the sixth (6th) business day following receipt of such request. Counsel states that the request form that the Complainant submitted does not apply to requests made to the Borough of Cliffside Park and encloses a copy of the Borough of Cliffside Park’s official OPRA request form.

Additionally, Counsel asserts that the records that the Complainant seeks are criminal investigatory records and are therefore exempt from public record disclosure requirements

¹ No legal representation listed on record.

² Represented by Christine Gillen, Esq., Diktas, Schandler, Gillen, Morejon, PC (Cliffside Park, NJ).

³ The original Custodian at the time of the Complainant’s OPRA request was Captain Michael Russo. The current Custodian replaced Captain Russo on or about September 3, 2009.

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

under OPRA. Counsel further asserts that the Borough is not obligated to conduct research among its records and correlate data from various government records in its possession in order to respond to a request. Counsel requests that the Complainant reasonably identify the documents requested and advises that the Complainant may not rely upon a general request for data. Counsel states the municipality is not obligated to produce records that are not contained in its own files.

August 13, 2009

Denial of Access Complaint filed with the Government Records Council (“GRC”) attaching a letter from the Custodian to the Complainant dated July 27, 2009.⁵

The Complainant states that he was denied access to the requested records.⁶ The Complainant agrees to mediate this complaint.

August 28, 2009

Offer of Mediation sent to the Custodian.

September 3, 2009

The Custodian agrees to mediation.

September 8, 2009

Complaint referred to mediation.

December 11, 2009

Complaint referred back from mediation.

January 29, 2010

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

February 4, 2010

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated July 17, 2009
- Letter from the Custodian to the Complainant dated July 27, 2009⁷

The Custodian states that in response to the Complainant’s OPRA request he found a thirty-two (32) page Incident Report File regarding the requested search warrant execution dated July 31, 2001. The Custodian states that, although it was not specifically listed in the

⁵ The Complainant failed to submit a copy of his OPRA request with the Denial of Access Complaint. The GRC received same as part of the Custodian’s SOI.

⁶ The Complainant makes no further assertions of fact nor arguments of law.

⁷ The Complainant included additional information regarding correspondence between the parties while this complaint was in mediation. Pursuant to the Uniform Mediation Act, N.J.S.A. 2A:23C-1 et seq., communications that take place during the mediation process are not deemed to be public records subject to disclosure under OPRA. N.J.S.A. 2A:23C-2. All communications which occur during the mediation process are privileged from disclosure and may not be used in any judicial, administrative or legislative proceeding, or in any arbitration, unless all parties and the mediator waive the privilege. N.J.S.A. 2A:23C-4.

Complainant's request, the Custodian provided an arrest report regarding the Complainant dated July 31, 2001. The Custodian asserts that he made redactions to this record for telephone numbers and social security numbers contained in the arrest report.

The Custodian argues that he denied the Complainant access to incident reports, officer notes, property list, and interagency communications as they are exempt from disclosure as criminal investigatory records pursuant to N.J.S.A. 47:1A-1.1. The Custodian cites the definition of a "government record" contained in OPRA, noting that such definition not only specifically excludes criminal investigatory records but also specifically excludes "inter-agency or intra-agency advisory, consultative, or deliberative material." Id. See Daily Journal v. Police Department of Vineland, 351 N.J. Super. 110, 131 (App. Div. 2002), *certif. denied* 174 N.J. 364 (2002).

The Custodian asserts that the term "criminal investigatory record" includes any record which is not required by law to be made, maintained or kept on file that is held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding. N.J.S.A. 47:1A-1.1. The Custodian further asserts that the term "criminal investigatory record" has been said to include records involving all manner of crimes, resolved or unresolved, and to include information that is part and parcel of an investigation, confirmed and unconfirmed. The Custodian cites Janeczko v. N.J. Dept. of Law and Public Safety, GRC Complaint Nos. 2002-79 and 2002-80 (June 21, 2004) and Nance v. Scotch Plains Police Dept., GRC Complaint No. 2003-125 (January 2005) in support of this contention. The Custodian asserts that the criminal investigatory record exemption to disclosure applies regardless of whether the investigation is pending or complete, citing Morgano v. Essex County Prosecutor's Office, GRC Complaint No. 2007-156 (Interim Order, Feb. 27, 2008). The Custodian contends that police incident reports are criminal investigatory records and are therefore exempt from disclosure. Nance, *supra*.

The Custodian argues that there exists no requirement in the law concerning the making, maintaining or keeping on file the results of an investigation by a law enforcement official or agency into the alleged commission of a criminal offense. Bent v. Twp. Of Stafford Police Dep't., 381 N.J. Super. 30, 39 (App. Div. 2005), quoting River Edge Sav. & Loan Ass'n v. Hyland, 165 N.J. Super. 540, 545 (App. Div), *cert. denied*, 81 N.J. 58 (1979) (other citations omitted). The Custodian maintains that OPRA further precludes disclosure of any government or public record that is exempt from public access pursuant to any other statutory, regulatory or executive authority. N.J.S.A. 47:1A-9. The Custodian further asserts that such a public access exemption has been imposed upon criminal history records pursuant to N.J.S.A. 53:1-20.6 and N.J.A.C. 13:59.

The Custodian argues that denial of access is compulsory when it appears that the records requested pertain to an investigation in progress or if access is inimical to the public interest. N.J.S.A. 47:1A-3. The Custodian also cites N.J.S.A. 47:1A-2.2 in support of the proposition that a person convicted of any indictable offense is seeking government records containing personal information pertaining to that person's victim or the victim's family.

The Custodian contends that certain police records regarding an investigation are not exempt from disclosure. N.J.S.A. 47:1A-3. The Custodian notes that police arrest reports, which contain information required to be disclosed pursuant to N.J.S.A. 47:1A-3.b., and

which are required by law to be maintained or kept on file by the agency retention requirements imposed by NJDARM are within the statutory definition of a government record and must be disclosed under OPRA. Morgano, *supra*.

Nevertheless, the Custodian certifies that there are no records responsive to the Complainant's request.⁸

Analysis

Whether the Custodian unlawfully denied access to the records requested?

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:

"[a] government record shall not include the following information which is deemed to be confidential for the purposes of [OPRA] as amended and supplemented:

...
criminal investigatory records." N.J.S.A. 47:1A-1.1.

OPRA defines a criminal investigatory record as:

"[a record] which is not required by law to be made, maintained or kept on file that is held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding." N.J.S.A. C.47:1A-1.1.

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

⁸ The Custodian's Counsel again submits evidence of matters that were discussed in mediation, but as discussed *infra* at footnote 7, pursuant to the Uniform Mediation Act, such evidence cannot be considered herein. Daniel Gatson v. Borough of Cliffside Park Police Department (Bergen), 2009-239, Findings and Recommendations of the Executive Director 4

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.

In Renna v. County of Union, 407 N.J. Super. 230 (App. Div. 2009), the Appellate Division held that although requestors shall continue to use public agencies' OPRA request forms when making requests, no custodian shall withhold such records if the written request for such records, not presented on the official form, contains the requisite information prescribed in the section of OPRA requiring custodians to adopt a form. *Id.* In effect, this permits requesters to write their own correspondence that requests records from a custodian, as long as the request properly invokes OPRA.

Furthermore, Renna holds that "where the requestor fails to produce an equivalent writing that raises issues as to the nature or substance of the requested records, the custodian may require that the requestor complete the form generated by the custodian pursuant to N.J.S.A. 47:1A-5(g)." The pertinent section of N.J.S.A. 47:1A-5.g. states that "a request for access to a government record shall be in writing and hand-delivered, mailed, transmitted electronically, or otherwise conveyed to the appropriate custodian." *Id.*

Here, the evidence of record indicates that in making his request, the Complainant used an official OPRA request form from the New Jersey Department of Law and Public Safety. In the Custodian's timely response to the Complainant's request, the Custodian denied the request on the grounds that the request form that the Complainant used does not apply to requests made to the Borough of Cliffside Park; the Custodian requested that the Complainant use the Borough's official OPRA request form and enclosed a copy of such form for the Complainant's use. However, pursuant to the Appellate Division's decision in Renna, *supra*, rendered May 21, 2009, a custodian may not refuse a request for records made under OPRA so long as the request is in writing and clearly invokes OPRA. The evidence of record indicates that the request form used by the Complainant on July 17, 2009 properly invokes OPRA; the Custodian's denial of access therefore violates OPRA pursuant to N.J.S.A. 47:1A-5.g. and Renna v. County of Union, 407 N.J. Super. 230 (App. Div. 2009).

Because a custodian may not refuse a request for records made under OPRA which is in writing and clearly invokes OPRA, and because the evidence of record indicates that the request form used by the Complainant clearly invoked OPRA, the Custodian's denial of access to the records requested violates OPRA pursuant to N.J.S.A. 47:1A-5.g. and Renna v. County of Union, 407 N.J. Super. 230 (App. Div. 2009).

However, request item No. 1 of the Complainant's request is invalid under OPRA because it is overly broad and because it would require research for the Custodian to fulfill this request item.

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.

In determining that MAG Entertainment's request for "all documents or records" from the Division of Alcoholic Beverage Control pertaining to selective enforcement was invalid under OPRA, the Appellate Division noted that:

"[m]ost significantly, the request failed to identify with any specificity or particularity the governmental records sought. MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past. Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted." *Id.*

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),⁹ 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."¹⁰

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 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).

⁹ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

¹⁰ As stated in Bent, *supra*.

Besides a request for an OPRA exempt search warrant, the Complainant's request does not ask for any specific records. Instead, the Complainant has issued a search query to the Custodian. Such requests require that a Custodian do research amongst their records for specific texts and subject matter. Under the holding of MAG, such requests that require research are not valid OPRA request, and the Custodian has lawfully denied access under these grounds.

Request item No. 1 of the Complainant's request seeks "[a]ny and all statements, reports, e-mails, faxes, texts, and photographs that pertain to Daniel Gatson ("Complainant")[".] This request would require the Custodian to research all of his files to locate those records containing the requested subject matter, *i.e.*, pertaining in any way to the Complainant. As such, request item No. 1 is overly broad and is therefore invalid under OPRA.

Because request item No. 1 of the Complainant's request would require the Custodian to conduct research to locate records containing the requested subject matter, this request item is overly broad and is therefore invalid under OPRA. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Finally, the records requested pursuant to request item No. 2 of the Complainant's OPRA request are exempt from disclosure because they fall within the definition of criminal investigatory records at N.J.S.A. 47:1A-1.1. OPRA defines a "criminal investigatory record" as a record which is not required by law to be made, maintained or kept on file that is held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding. N.J.S.A. C.47:1A-1.1. Request item No. 2 of the Complainant's OPRA request seeks a copy of the search warrant issued on July 31, 2001 authorizing the search of the Complainant's residence at 184 Jersey Ave, Cliffside Park, NJ 07010. The Custodian has asserted that criminal investigatory records are exempt from disclosure under OPRA.

The status of records purported to fall under the criminal investigatory records exemption pursuant to N.J.S.A. 47:1A-1.1 was examined by the GRC in Janeczko v. NJ Department of Law and Public Safety, Division of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004), affirmed in an unpublished opinion of the Appellate Division of the New Jersey Superior Court in May 2004. The Council found that under OPRA, "criminal investigatory records include records involving all manner of crimes, resolved or unresolved, and includes information that is part and parcel of an investigation, confirmed and unconfirmed". Moreover, the Council has previously determined that search warrants are criminal investigatory records which are exempt from disclosure under OPRA. Nance v. Scotch Plains Township Police Department, GRC Complaint No. 2003-125 (January 2005).

Therefore, the records requested pursuant to request item No. 2 of the Complainant's OPRA request are exempt from disclosure because they fall within the definition of criminal investigatory records at N.J.S.A. 47:1A-1.1; *see also*, Nance, *supra*.

Whether the Custodian's denial of access to the requested records 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.

In the instant matter, the Custodian improperly denied the Complainant access to the requested records, stating that the request was not on the required official OPRA request form of the Borough. However, the evidence of record indicates that request item No. 1 of the Complainant's request is invalid because it is overly broad and would require the Custodian to conduct research, and the records requested pursuant to request item No. 2 of the Complainant's request, search warrants, are exempt from disclosure under N.J.S.A. 47:1A-1.1 because they are criminal investigatory records.

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 the Custodian violated N.J.S.A. 47:1A-5.g by improperly refusing the Complainant's request for records which was in writing and which clearly invoked OPRA, request item No. 1 of the Complainant's request is invalid because it is overly broad and would require the Custodian to conduct research, and the records requested pursuant to request item No. 2 of the Complainant's request, search warrants, are exempt from disclosure

under N.J.S.A. 47:1A-1.1 because they are criminal investigatory records. Therefore, 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.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because a custodian may not refuse a request for records made under OPRA which is in writing and clearly invokes OPRA, and because the evidence of record indicates that the request form used by the Complainant clearly invoked OPRA, the Custodian's denial of access to the records requested violates OPRA pursuant to N.J.S.A. 47:1A-5.g. and Renna v. County of Union, 407 N.J. Super. 230 (App. Div. 2009).
2. Because request item No. 1 of the Complainant's request would require the Custodian to conduct research to locate records containing the requested subject matter, this request item is overly broad and is therefore invalid under OPRA. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
3. The records requested pursuant to request item No. 2 of the Complainant's OPRA request are exempt from disclosure because they fall within the definition of criminal investigatory records at N.J.S.A. 47:1A-1.1; *see also*, Nance v. Scotch Plains Township Police Department, GRC Complaint No. 2003-125 (January 2005).
4. Although the Custodian violated N.J.S.A. 47:1A-5.g. by improperly refusing the Complainant's request for records which was in writing and which clearly invoked OPRA, request item No. 1 of the Complainant's request is invalid because it is overly broad and would require the Custodian to conduct research, and the records requested pursuant to request item No. 2 of the Complainant's request, search warrants, are exempt from disclosure under N.J.S.A. 47:1A-1.1 because they are criminal investigatory records. Therefore, 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.

Prepared By: Darryl Rhone
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

September 13, 2010