



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

Richard Rivera
Complainant

Complaint No. 2009-34

v.

Mercer County Prosecutor's Office
Custodian of Record

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

1. The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or properly requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's 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).
2. Because the Custodian certified that the written notifications responsive are created as part of criminal investigations into whether a person is legally in the United States and utilized by the Mercer County Prosecutor's Office as part of their criminal investigations, the records are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1. and Janeczko v. NJ Department of Law and Public Safety, Division of Criminal Justice, GRC Complaint No. 2002-79 and 2002-80 (June 2004) and the Custodian has not unlawfully denied access to the written notifications. *See also* Briggs v. City of Trenton (Mercer), GRC Complaint No. 2007-58 (March 2007)(holding that Custodian lawfully denied access to records deemed to be criminal investigatory in nature).
3. Because the Complainant's OPRA request Item No. 3 seeks information rather than a specifically identifiable government record, the request item is invalid pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005).



4. Although the Custodian's failure to provide a written response to the Complainant's OPRA request within the statutorily mandated time frame resulted in a "deemed" denial, because the Custodian lawfully denied access to the written notifications responsive to request Item No. 2 and request Item No. 3 of the Complainant's OPRA request is invalid under OPRA, 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 "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 22nd Day of December, 2009

Robin Berg Tabakin, Chair
Government Records Council

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

Harlynn A. Lack, Secretary
Government Records Council

Decision Distribution Date: January 5, 2010

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Richard Rivera¹
Complainant**

GRC Complaint No. 2009-34

v.

**Mercer County Prosecutor's Office²
Custodian of Records**

Records Relevant to Complaint: On-site inspection of the following:

1. Agency policy, including reporting mechanism and sample forms, in accordance with Attorney General Directive 2007-3 ("Directive 2007-3").³
2. Any and all logs, reports, forms and entries relating to reporting and compliance of Directive 2007-3. These items should include names, addresses, year of birth, country of origin, offense(s), location of incident and alleged offense which precipitated notifying U.S. Customs and Immigration Enforcement ("ICE") authorities for the years 2007 and 2008 up to October 31, 2008.
3. Countywide data with any and all logs, reports, forms and entries relating to the reporting and compliance of Directive 2007-3. These items should include names, addresses, year of birth, country of origin, offense(s), location of incident and alleged offense which precipitated notifying U.S. Customs and Immigration Enforcement ("ICE") authorities for the years 2007 and 2008 up to October 31, 2008.⁴

Request Made: December 16, 2008

Response Made: January 16, 2009

Custodian: Joseph L. Bocchini, Jr.

GRC Complaint Filed: January 27, 2009⁵

Background

December 16, 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.

¹ Represented by Walter M. Luers, Esq., of Law Offices of Walter M. Luers, LLC. (Oxford, NJ).

² Represented by Sarah G. Crowley, Esq. (Trenton, NJ).

³ The Complainant notes that he does not want a copy of the actual Directive 2007-3.

⁴ The Complainant requested additional records which are not at issue in this complaint.

⁵ The GRC received the Denial of Access Complaint on said date.

January 13, 2009

Complainant's OPRA request. The Complainant resubmits the instant request via facsimile.⁶

January 16, 2009

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the twenty-fifth (25th) business day following receipt of such request.⁷ The Custodian states the following:

Complainant's request Item No. 1:

The Custodian states that one (1) record has been identified as responsive to this request item and is available for inspection at the Mercer County Prosecutor's Office ("MCPO") at a time convenient to both parties.

Complainant's request Item No. 2:

The Custodian states that the MCPO maintains only written notifications prepared by law enforcement agencies. The Custodian states that these records are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1. as part of a criminal investigation.

Complainant's request Item No. 3:

The Custodian states that with the exception of countywide data, this request item is a duplicate of the Complainant's request Item No. 2 and exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.

Additionally, the Custodian states that the Complainant's request for countywide data is a request for information and not an identifiable government record. The Custodian states that OPRA is not intended as a research tool to force custodians to identify and siphon useful information. Further, the Custodian states that a records custodian is not required to conduct research among its records and correlate data from various government records in the custodian's possession. The Custodian states that a valid OPRA request must reasonably identify a record and not general data, information or statistics and cites to Bent v. Township of Stafford Police Department, 381 N.J. Super. 30, 39 (App. Div. 2005).

January 27, 2009

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

- Complainant's OPRA request dated December 16, 2008 with the Complainant's note dated January 13, 2009 thereon.⁸

⁶The Complainant resubmitted his OPRA request because he did not receive a response from the Mercer County Prosecutor's Office ("MCPO").

⁷The Custodian's response is undated; therefore, the GRC relies on the date the Complainant provided in the Denial of Access Complaint as the date of the Custodian's response.

⁸The Complainant resubmitted his original OPRA request noting the date thereon.

- Letter from the Custodian to the Complainant undated.

The Complainant states that he submitted an OPRA request to the MCPO on December 16, 2008. The Complainant states that he resubmitted his request on January 13, 2009 after not receiving a response from the Custodian. The Complainant states that he received an undated written response from the Custodian on January 16, 2009 granting access to inspect one (1) record responsive to request Item No. 1 and denying access to request Items No. 2 and No. 3.

The Complainant argues that the Custodian initially granted access to inspect the records responsive to request Item No. 1 but then did not provide the agency's policy to the Complainant. Further, the Complainant contends that twenty-one (21) county prosecutor's offices and the Attorney General's Office provided records in response to requests similar to request Items No. 2 and No. 3.⁹

The Complainant does not agree to mediate this complaint.

March 3, 2009

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

March 10, 2009

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated December 16, 2008
- Letter from the Custodian to the Complainant undated.¹⁰

The Custodian certifies that his search for records responsive involved making inquiries to the appropriate office staff that have knowledge of the requested records. The Custodian certifies that an inquiry was made to office staff to determine if records responsive to request Item No. 2 could be pulled from the criminal investigatory file, but that U.S. Customs and Immigration Enforcement ("ICE") notifications are not specifically noted in the computerized case management system. Further, the Custodian certifies that no search was made regarding request Item No. 3 because the Complainant requested data rather than a specific identifiable government record.

Additionally, the Custodian certifies that no records responsive were destroyed in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management ("DARM").

The Custodian certifies that the MCPO received the Complainant's OPRA request on December 16, 2008 and again on January 13, 2009. The Custodian asserts that he responded in writing granting access to inspect request Item No. 1 and denying access to request Items No. 2 and No. 3, with the exception of the Complainant's request for

⁹ The Complainant attaches several examples of records provided and written responses to similar requests made to other agencies that satisfy request Items No. 2 and No. 3 of the instant complaint.

¹⁰ The Custodian also attached a MCPO facsimile cover sheet, but it is unclear how this document relates to the instant complaint.

countrywide date, as criminal investigatory records not subject to disclosure pursuant to N.J.S.A. 47:1A-1.1.

The Custodian certifies that the record responsive to request Item No. 1 remains available for inspection at the convenience of both parties.

The Custodian certifies that, in response to request Item No. 2, the MCPO maintains only the written notifications prepared by law enforcement agencies. The Custodian contends that said records are part of a criminal investigation and therefore exempt from disclosure under OPRA pursuant to N.J.S.A. 47:1A-1.1.

The Custodian certifies that he denied access to request Item No. 3 because the request, with the exception of the inclusion of the word “data,” was a duplication of Item No. 2 and are exempt pursuant to N.J.S.A. 47:1A-1.1.

Further the Custodian contends that OPRA only allows for requests for specific government records, not requests for information. The Custodian contends that OPRA is not intended as a research tool to force government officials to identify and siphon useful information. The Custodian argues that a records custodian is not required to conduct research among the agency’s records and that a request must reasonably identify a record and not general data, information or statistics. Bent, supra.¹¹

October 1, 2009

E-mail from the GRC to the Custodian. The GRC requests that the Custodian certify to the following:

1. Whether the written notifications are required to be made, maintained or kept on file?
2. Whether the purpose of the written notifications relate directly to a criminal investigation being conducted by the MCPO?

The GRC requests that the Custodian provide the legal certification by October 6, 2009.

October 7, 2009

Custodian’s legal certification. The Custodian certifies that the Directive 2007-3 provides that a local, county or state law enforcement officer making an arrest for any indictable offense or for driving while under the influence (“D.W.I.”) or another officer designated to do so shall inquire about the arrestee’s citizenship, nationality and immigration status as part of the booking process. The Custodian certifies that if the officer has any reason to believe that the arrestee may not lawfully be present in the United States, the officer shall notify ICE through the National Law Enforcement Telecommunications System (“NLETS”) during the booking process. The Custodian certifies that ICE subsequently sends an Immigration Alien Response (“IAR”) message through NLETS to the inquiring police agency. The police agency then notes on the complaint that there is reason to believe the defendant is an illegal immigrant and notes the basis thereof on the second page.¹²

¹¹ The Custodian provides additional information that is not relevant to the instant complaint.

¹² The Custodian reiterates that said notifications are sent to the inquiring police agency.

The Custodian certifies that the response from ICE is utilized by the MCPO for purposes of bail hearings and subsequent court events in order to substantiate higher bail, bail conditions, sentencing and other matters and are considered part of the criminal investigatory file and are therefore exempt from disclosure under OPRA.

The Custodian certifies that the MCPO does not specifically track cases involving ICE notifications and would have to search each file opened since 2007 to find the records responsive.

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 ... A government record shall not include the following information which is deemed to be confidential ... *criminal investigatory records...*” (Emphasis added.) 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. 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.

Further, OPRA 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.

The GRC first turns to the issue of whether the Custodian responded to the Complainant's OPRA request in a timely manner.

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.¹³ 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).

The Custodian in this complaint acknowledged that he received the Complainant's OPRA request on December 16, 2008 and January 13, 2009 but failed to respond until January 16, 2009, the twenty-fifth (25th) business day after receipt of the Complainant's request, when he granted access to request Item No. 1 and denied access to request Items No. 2 and No. 3.

¹³ It is the GRC's position that a custodian's written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

Therefore, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or properly requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley, supra.

Next, the GRC examines whether there was an unlawful denial of access because the Custodian denied access to records responsive to request Items No. 2 pursuant to N.J.S.A. 47:1A-1.1. and denied access to request Item No. 3 on the grounds that it was a request for information that would have forced the Custodian to conduct research and correlate data in order to respond.

The Custodian initially responded to request Item No. 2 stating that the MCPO only maintained written notifications which are exempt from disclosure under OPRA as criminal investigatory records pursuant to N.J.S.A. 47:1A-1.1. The Custodian subsequently certified that the notifications are produced as part of a police agency's suspicion that a person arrested for an indictable offense or D.W.I. is in the country illegally. The Custodian also certified that said notifications are used by the MCPO in bail hearings, sentencing matters and other matters.

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. 47:1A-1.1). Criminal investigatory records include records involving all manner of crimes, resolved or unresolved, and include information that is part and parcel of an investigation, confirmed and unconfirmed.

In Janeczko v. NJ Department of Law and Public Safety, Division of Criminal Justice, GRC Complaint No. 2002-79 and 2002-80 (June 2004), the Council found that the records being sought were considered criminal investigatory records and therefore exempt from disclosure. Specifically, 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. The Council stated that it is also important to note that the exemption does not permit access to investigatory records once the investigation is complete.

In the instant complaint, the Custodian certified on October 7, 2009 that the written notifications responsive to request Item No. 2 of the Complainant's request are created as part of criminal investigations into whether a person is legally in the United States and utilized by the MCPO for purposes of bail hearings and subsequent court events in order to substantiate higher bail, bail conditions, sentencing and other matters. Further, the Custodian certified that the MCPO utilizes the notifications to advance their criminal investigations.

Therefore, because the Custodian certified that the written notifications responsive to the request are created as part of criminal investigations into whether a person is legally in the United States and utilized by the MCPO as part of their criminal

investigations, the records are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1. and Janeczko, *supra* and the Custodian has not unlawfully denied access to the written notifications. *See also* Briggs v. City of Trenton (Mercer), GRC Complaint No. 2007-58 (March 2007)(holding that Custodian lawfully denied access to records deemed to be criminal investigatory in nature).

With regard to request Item No. 3, the Complainant requested “[c]ountrywide data with any and all logs, reports, forms and entries relating to the reporting and compliance of Directive 2007-3...” The Custodian responded in writing on January 16, 2009, stating that the Complainant’s request would force the Custodian to conduct research and correlate data from various records.

The Complainant’s OPRA request Item No. 3 is a request for information and not a request for specifically identifiable government records.

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),¹⁴ 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.”¹⁵

In the instant complaint, the Complainant’s request Item No. 3 for “countywide data” fails to identify specific government records and would have forced the Custodian to research all files in his possession to identify and siphon useful information. OPRA does not require that Custodians conduct research to fulfill requests. *See* MAG, *supra* and Bent, *supra*.

Therefore, because the Complainant’s OPRA request Item No. 3 seeks information rather than a specifically identifiable government record, the request item is invalid pursuant to MAG, *supra* and Bent, *supra*.

¹⁴ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

¹⁵ As stated in Bent, *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 the Custodian’s failure to provide a written response to the Complainant’s OPRA request within the statutorily mandated time frame resulted in a “deemed” denial, because the Custodian lawfully denied access to the written notifications responsive to request Item No. 2 and request Item No. 3 of the Complainant’s OPRA request is invalid under OPRA, 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 “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. The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or properly requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's 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).
2. Because the Custodian certified that the written notifications responsive are created as part of criminal investigations into whether a person is legally in the United States and utilized by the Mercer County Prosecutor's Office as part of their criminal investigations, the records are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1. and Janeczko v. NJ Department of Law and Public Safety, Division of Criminal Justice, GRC Complaint No. 2002-79 and 2002-80 (June 2004) and the Custodian has not unlawfully denied access to the written notifications. *See also* Briggs v. City of Trenton (Mercer), GRC Complaint No. 2007-58 (March 2007)(holding that Custodian lawfully denied access to records deemed to be criminal investigatory in nature).
3. Because the Complainant's OPRA request Item No. 3 seeks information rather than a specifically identifiable government record, the request item is invalid pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534, 546 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005).
4. Although the Custodian's failure to provide a written response to the Complainant's OPRA request within the statutorily mandated time frame resulted in a "deemed" denial, because the Custodian lawfully denied access to the written notifications responsive to request Item No. 2 and request Item No. 3 of the Complainant's OPRA request is invalid under OPRA, 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 "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

December 9, 2009