



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

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

LORI GRIFA
Commissioner

FINAL DECISION

May 24, 2011 Government Records Council Meeting

Louis Paul Toscano
Complainant

Complaint No. 2010-148

v.

New Jersey Department of Labor
and Workforce Development
Custodian of Record

At the May 24, 2011 public meeting, the Government Records Council ("Council") considered the April 20, 2011 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. Although the Custodian responded in writing to the Complainant's June 30, 2010 OPRA request within the statutorily mandated time frame pursuant to N.J.S.A. 47:1A-5.i., the Custodian's response was legally insufficient because he failed to provide a specific lawful basis for said denial of access. Therefore, the original Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5.g. and DeAppolonio, Esq. v. Borough of Deal (Monmouth), GRC Complaint No. 2008-62 (September 2009). The GRC notes that referencing an Administrative Disposition for the Complainant's withdrawal of a different Denial of Access Complaint is not a lawful basis for denial of access to records requested under OPRA.
2. Because the Complainant's request for Items No. 1 and No. 2 is overly broad, fails to identify specific government records sought and would require the Custodian to conduct research in order to locate and determine which records may be responsive to the request, the Complainant's request is invalid under OPRA. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council of Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
3. Because the Custodian has certified that no record responsive to the Complainant's OPRA request Item No. 2 exist and there is no credible evidence in the record to refute the Custodian's certification, the Custodian has not unlawfully denied the Complainant access to the requested records pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005). N.J.S.A. 47:1A-6.



4. Although the Custodian violated N.J.S.A. 47:1A-5.g. by failing to provide a specific lawful basis for the denial of access, the Complainant's request for Item No. 1 is invalid under OPRA because it is overly broad, fails to identify specific government records sought and would require the Custodian to conduct research, and the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. 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 24th Day of May, 2011

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: June 2, 2011

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 24, 2011 Council Meeting**

**Louis Paul Toscano¹
Complainant**

GRC Complaint No. 2010-148

v.

**New Jersey Department of Labor and Workforce Development²
Custodian of Records**

Records Relevant to Complaint: Copies of:

1. Original records pertaining to a September 30, 2008 hospital visit.
2. All records relevant to how the Department of Labor and Workforce Development (“LWD”) will answer the Complainant’s Merit System Board Appeals claim.

Request Made: June 26, 2010³

Response Made: July 9, 2010

Custodian: Mark Radcliffe

GRC Complaint Filed: July 19, 2010⁴

Background

June 26, 2010

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.

July 9, 2010

Custodian’s response to the OPRA request. The Custodian certifies that he received the Complainant’s OPRA request on June 30, 2010. The Custodian responds in writing to the Complainant’s OPRA request on the sixth (6th) business day following receipt of such request. The Custodian states that access to records responsive to request Item No. 1 is denied. Further, the Custodian refers the Complainant to the Government Records Council’s (GRC) Administrative Case Disposition dated August 11, 2009 which represents the final decision rendered in this case.⁵ The Custodian states that he is unaware of any records responsive to request Item No. 2.

¹ No legal representation listed on record.

² Represented by DAG Donald Palombi, on behalf of the NJ Attorney General.

³ The Custodian certifies that he received the Complainant’s OPRA request on June 30, 2010.

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

⁵ The Administrative Case Disposition referenced by the Custodian is Toscano v. NJ Department of Labor, Division of Disability Determination Services, GRC Complaint No. 2009-152 (August 2009), which states that the Complainant voluntarily withdrew his Denial of Access Complaint in writing on July 7, 2009. The Louis Paul Toscano v. New Jersey Department of Labor and Workforce Development, 2010-148 – Findings and Recommendations of the Executive Director

July 19, 2010

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

- Complainant’s OPRA request dated June 26, 2010.
- Letter from the Custodian to the Complainant dated July 9, 2010 with attachments.⁶

The Complainant states that he does not accept the Custodian’s response to his OPRA request. The Complainant states that the Administrative Case Disposition which the Custodian sent in response to request Item No. 1 is no longer applicable. The Complainant also states that he has a letter from the Director of the Division of Vocational and Rehabilitation Services (“DVRS”) dated October 30, 2008 which indicated to the Complainant’s physician that the physician has the records responsive.

The Complainant also states his concerns about what he characterizes as a fraudulent employment offer from the Division of Disability Determination Services (“DDS”).⁷ The Complainant asserts that the LWD used the fraudulent employment offer to monitor the Complainant’s movements between the DVRS and DDS. The Complainant also states that DDS tendered this fraudulent job offer to him because of his prior employment with the DVRS. The Complainant further states that the DDS gave the records responsive to the DVRS when the Complainant accepted the proffered job. Lastly, the Complainant states that the LWD and DDS violated his confidentiality by releasing these records to DVRS.

The Complainant signs the Agreement to Mediate form but fails to indicate on the Denial of Access Complaint whether he wants to participate in mediation.

July 21, 2010

Letter from the GRC to the Complainant. The GRC states that it is in receipt of the Complainant’s Denial of Access Complaint. The GRC states that the Complainant indicated that he does not wish to participate in mediation but that the Complainant signed the Agreement to Mediate.⁸ The GRC requests the Complainant to inform the GRC in writing if the Complainant wishes to participate in the mediation process.

July 28, 2010

Letter from the Complainant to the GRC. The Complainant informs the GRC that he signed the mediation agreement because it appeared from the Denial of Access

Complainant’s request in GRC Complaint No. 2009-152 was dated March 22, 2009. The OPRA request dated March 22, 2009 is not the one at issue in the present complaint.

⁶ The Complainant includes a copy of the GRC’s letter and Administrative Case Disposition of Toscano v. NJ Department of Labor, Division of Disability Determination Services, GRC Complaint No. 2009-152 (August 2009).

⁷ The Division of Disability Determination Services is in the Department of Labor and Workforce Development.

⁸ The Complainant has two (2) other Denial of Access Complaints filed with the GRC. In those two (2) complaints the Complainant declined mediation, but signed the mediation agreements.

Complaint that the signature was compulsory. The Complainant also informs the GRC that he does not wish to mediate this complaint.

July 28, 2010

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

August 3, 2010

Telephone call from the Custodian to the GRC. The Custodian requests an extension to August 13, 2010 to complete the SOI.

August 3, 2010

E-mail from the GRC to the Custodian. The GRC grants the Custodian an extension to August 13, 2010 to complete the SOI.

August 11, 2010⁹

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated June 26, 2010.
- Letter from the Custodian to the Complainant dated July 9, 2010 (with attachments)
 - Letter from Christopher Myers, Personnel and Labor Analyst to the Complainant dated March 12, 2009.
 - Records Retention and Disposition Schedule for Individual employment files.

The Custodian certifies that the DDS is in possession of the records responsive to Item No. 1 of the Complainant’s OPRA request. The Custodian certifies that copies of these records have been provided to the Complainant in the past. The Custodian further certifies that the Complainant asks that DDS return the original records responsive to Item No. 1 to the Complainant because the Complainant asserts that such records are his property. The Custodian asserts that OPRA permits government records to be available for inspection, copying or examination, but that OPRA does not require an agency to provide a requestor with an original government record.

In addition, the Custodian certifies that the Complainant’s OPRA request for Item No. 2 was denied because no records exist which are responsive to this request. The Custodian also certifies that the Complainant does not have an appeal pending before the Merit System Board.

The Custodian also certifies that an individual employee file for Divisional Personnel must be retained by the agency for three (3) years after an individual’s termination of employment as instituted by the Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management (“DARM”).

⁹ Additional correspondence was received from the Custodian which is not relevant to this complaint.
Louis Paul Toscano v. New Jersey Department of Labor and Workforce Development, 2010-148 – Findings and Recommendations of the Executive Director

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...*(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 evidence of record indicates that the Complainant filed an OPRA request for 1) original records pertaining to a September 30, 2008 hospital visit and 2) all records relevant to how LWD will answer the Complainant's Merit System Board Appeals Claim. The evidence of record further indicates that the Custodian denied access to the Complainant's request on the sixth (6th) business day following receipt of such request. In addition, the evidence of record indicates that the Custodian denied access to the records responsive to the Complainant's request Item No. 1 stating that he must abide by the GRC's decision in the Administrative Disposition of Toscano v. NJ Department of Labor, Division of Disability Determination Services, GRC Complaint No. 2009-152 (August 2009), wherein the Complainant voluntarily withdrew his Denial of Access Complaint dated May 5, 2009. The evidence of record also indicates that the Custodian responded to the Complainant's request for Item No. 2 stating that no records responsive to the request exist.

In the instant complaint, the Complainant submitted an OPRA request on June 30, 2010. The Custodian denied the Complainant's OPRA request Item No. 1 on July 9, 2010 by referencing the GRC's Administrative Case Disposition dated August 11, 2009, wherein the Complainant voluntarily withdrew his Denial of Access Complaint dated May 5, 2009. Thus, the Custodian did not provide a lawful basis for a denial.

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.¹⁰ 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).

OPRA provides that if a "...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" (Emphasis added.) N.J.S.A. 47:1A-5.g. In DeAppolonio, Esq. v. Borough of Deal (Monmouth), GRC Complaint No. 2008-62 (September 2009), the complainant argued in the Denial of Access Complaint that although the custodian responded in writing in a timely manner, the custodian failed to provide some of the records responsive and further failed to provide a specific lawful basis for denying access to the missing records.

The GRC held that:

¹⁰ 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.

“... the Council’s decisions have repeatedly supported this statutory mandate by holding that custodians must provide a legally valid reason for any denial of access to records. *See Seabrook v. Cherry Hill Police Department*, GRC Complaint No. 2004-40 (April 2004), *Rosenblum v. Borough of Closter*, GRC Complaint No. 2005-16 (October 2005) and *Paff v. Township of Plainsboro*, GRC Complaint No. 2005-29 (October 2005). The Council also held that for a denial of access to be in compliance with OPRA, it must be specific and must be sufficient to prove that a custodian’s denial is authorized by OPRA. *See Morris v. Trenton Police Department*, GRC Complaint No. 2007-160 (May 2008). Here, while the Custodian’s response to the Complainant’s request was within the time allowed by N.J.S.A. 47:1A-5.i., his response was not in compliance with OPRA because it failed to provide a specific basis for denying the Complainant access to certain records pursuant to N.J.S.A. 47:1A-5.g. and the Council’s decisions in *Seabrook*, *supra*, *Rosenblum*, *supra*, *Paff*, *supra* and *Morris*, *supra*.” *Id.* at pg. 7.

Therefore, although the Custodian responded in writing to the Complainant’s June 30, 2010 OPRA request within the statutorily mandated time frame pursuant to N.J.S.A. 47:1A-5.i., the Custodian’s response was legally insufficient because he failed to provide a specific lawful basis for said denial of access. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5.g. and *DeAppolonio*, *supra*. The GRC notes that referencing an Administrative Disposition for which the Complainant’s withdrawal of a separate Denial of Access Complaint is not a lawful basis for denial of access to records requested under OPRA.

Although the Custodian’s response to request Item No. 1 was insufficient, the Complainant’s request is invalid under OPRA because it fails to identify specific identifiable government records and is overly broad and unclear. 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),¹¹ 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

¹¹ Affirmed on appeal regarding *Bent v. Stafford Police Department*, GRC Case No. 2004-78 (October 2004).

with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents.¹²”

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).”

In the present complaint, the Complainant’s request Item No. 1 for records pertaining to a September 30, 2008 hospital visit is invalid under OPRA because the Complainant fails to specify identifiable government records sought; moreover, the Complainant’s request fails to specify a particular hospital involved. Request Item No. 2 is invalid under OPRA because it fails to specify identifiable government records sought and because it would require the Custodian to conduct research to locate and identify any records which might be responsive to the request.

Therefore, because the Complainant’s request for Items No. 1 and No. 2 is overly broad, fails to identify specific government records sought and would require the Custodian to conduct research in order to determine the records which may be responsive to the request, the Complainant’s request is invalid under OPRA. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council of Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Additionally, the Custodian responded to the Complainant’s OPRA request within the seven (7) business days stating that he is unaware of any records responsive to request Item No. 2. Furthermore, the Custodian has certified in the SOI that no records exist which are responsive to request Item No. 2. Further, the Complainant has failed to submit any evidence to refute the Custodian’s certification in this regard.

¹² As stated in Bent, *supra*.

In Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the complainant sought telephone billing records showing a call made to him from the New Jersey Department of Education. The Custodian responded stating that there was no record of any telephone calls made to the Complainant. The Custodian subsequently certified that no records responsive to the Complainant's request existed. The Complainant failed to submit any evidence to refute the Custodian's certification. The GRC held that the Custodian did not unlawfully deny access to the requested records because the Custodian certified that no records responsive to the request existed.

Therefore, because the Custodian has certified that no record responsive to the Complainant's OPRA request Item No. 2 exist and there is no credible evidence in the record to refute the Custodian's certification, the Custodian has not unlawfully denied the Complainant access to the requested records pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005). N.J.S.A. 47:1A-6.

Whether the Custodian's insufficient respond to the Complainant's OPRA request for Item No. 1 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 matter before the Council, the evidence of record indicates that the Custodian responded to the Complainant's OPRA request Item No. 1 referencing the GRC's Administrative Case Disposition dated August 11, 2009, wherein the Complainant voluntarily withdrew his Denial of Access Complaint dated May 5, 2009. However, the Complainant's request is invalid under OPRA because it is overly broad, fails to identify specific government records sought and would require the Custodian to perform research to respond to the request.

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 failing to provide a specific lawful basis for the denial of access, the Complainant's request for Item No. 1 is invalid under OPRA because it is overly broad, fails to identify specific government records sought and would require the Custodian to conduct research, and the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. 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. Although the Custodian responded in writing to the Complainant's June 30, 2010 OPRA request within the statutorily mandated time frame pursuant to N.J.S.A. 47:1A-5.i., the Custodian's response was legally insufficient because he failed to provide a specific lawful basis for said denial of access. Therefore, the original Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5.g. and DeAppolonio, Esq. v. Borough of Deal (Monmouth), GRC Complaint No. 2008-62 (September 2009). The GRC notes that referencing an Administrative Disposition for the Complainant's withdrawal of a different Denial of Access Complaint is not a lawful basis for denial of access to records requested under OPRA.
2. Because the Complainant's request for Items No. 1 and No. 2 is overly broad, fails to identify specific government records sought and would require the Custodian to conduct research in order to locate and determine which records may be responsive to the request, the Complainant's request is invalid under OPRA. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council of Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
3. Because the Custodian has certified that no record responsive to the Complainant's OPRA request Item No. 2 exist and there is no credible evidence in the record to refute the Custodian's certification, the Custodian has not

unlawfully denied the Complainant access to the requested records pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005). N.J.S.A. 47:1A-6.

4. Although the Custodian violated N.J.S.A. 47:1A-5.g. by failing to provide a specific lawful basis for the denial of access, the Complainant's request for Item No. 1 is invalid under OPRA because it is overly broad, fails to identify specific government records sought and would require the Custodian to conduct research, and the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. 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: Harlynn A. Lack, Esq.
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

April 20, 2011