



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Acting Commissioner

FINAL DECISION

March 27, 2012 Government Records Council Meeting

Harry Hersh
Complainant

Complaint No. 2010-283

v.

Lakewood Board of Education (Ocean)
Custodian of Record

At the March 27, 2012 public meeting, the Government Records Council (“Council”) considered the March 20, 2012 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 immediately respond in writing to the Complainant’s OPRA requests for immediate access records, i.e., attorney bills, invoices and vouchers, and special education service contracts, 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 (Interim Order October 31, 2007). *See also* Campbell v. Township of Downe (Cumberland), GRC Complaint No. 2009-219 (Interim Order dated January 25, 2011). However, the Council declines to order disclosure because the Custodian certified to the GRC on March 5, 2012 that the Complainant was provided all of the records responsive to his request on January 23, 2012.
2. Because Request Item No. 3 of the Complainant’s request fails to specify identifiable government records sought and would require the Custodian to conduct research outside the scope of the Custodian’s duties, this request item is invalid under OPRA pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); and Burnett v. County of Gloucester, 415 N.J. Super. 506 (App. Div. 2010).



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 27th Day of March, 2012

Robin Berg Tabakin, Chair
Government Records Council

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

Catherine Starghill, Executive Director
Government Records Council

Decision Distribution Date: April 5, 2012

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 27, 2012 Council Meeting**

**Harry Hersh¹
Complainant**

GRC Complaint No. 2010-283

v.

**Lakewood Board of Education (Ocean)²
Custodian of Records**

Records Relevant to Complaint: Copies of:

1. Any and all attorney invoices, bills, vouchers, authorizations, approvals and check payments for legal services of any kind for 2009 and 2010, including invoices and vouchers submitted and/or approved as well as the corresponding copies of check(s) paying the invoice(s). Please include invoices for all legal services whether in a consultative capacity, salaried capacity, [and] payments to in-house counsel and outside counsel, and all funds paid by the Lakewood Board of Education for legal services of any kind whether local, state, or federally funded.
2. All special education service contracts for 2009 and 2010 for public and non-public school services, for all federal, state and locally funded programs, provided by third-party vendors only, whether for school age (K-12) or pre-school age services. Please include all invoices, vouchers, bills, statements, and copies of the checks in payment thereof.
3. Any and all New Jersey State or federal fiscal, managerial, or educational audits, reviews, monitoring reports or anything of a similar nature received in the period between January 1, 2008 and September 20, 2010 by the Lakewood Board of Education, as well as all correspondence relating to any such audits, reviews, [and] monitoring reports.

Request Made: September 20, 2010³

Response Made: September 20, 2010

Custodian: Lydia Silva⁴

GRC Complaint Filed: November 1, 2010⁵

¹ No legal representation listed on record.

² Represented by Michael I. Inzelbuch, Esq. (Lakewood, NJ).

³ The Complainant amended this request on September 21, 2010.

⁴ The original Custodian was Robert Finger, and subsequently, Robert Green.

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

Background

September 20, 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 attached to an e-mail. The Complainant states that he understands that each page of responsive records will cost \$0.05 per page.

September 20, 2010

Custodian's response to the OPRA request. The Custodian responds in writing via e-mail to the Complainant's OPRA request on the same business day as receipt of the request. The Custodian states that the records responsive to the request will be ready for pickup on September 29, 2010.

September 21, 2010

E-mail from the Complainant to the Custodian. The Complainant states that attached to this e-mail is an amended OPRA request form. The Complainant states that he wants the Custodian to disregard his September 20, 2010 OPRA request form because it was incomplete.⁶

October 4, 2010

E-mail from the Complainant to the Custodian. The Complainant asks the Custodian whether he can pick up the records responsive to his OPRA request. The Complainant inquires what the total cost will be.

October 4, 2010

E-mail from the Custodian to the Complainant. The Custodian informs the Complainant that he was informed that he could have picked up the requested records on September 29, 2010 and that he never called back or came to pick them up. The Custodian asserts that the responsive records are still available in her office. The Custodian states that at a rate of \$0.05 per page, the cost of the requested records is \$18.20.

October 4, 2010

E-mail from the Complainant to the Custodian. The Complainant thanks the Custodian and states that he must have missed the September 20, 2010 e-mail that informed him that he could pick up the records on September 29, 2010. The Complainant asserts that he will pick up the records the next day, October 5, 2010.

October 11, 2010

E-mail from the Complainant to the Custodian. The Complainant states that the Custodian's response to his September 21, 2010 request appears to be incomplete. The Complainant asserts that the Custodian has instead responded to his previous September 20, 2010 request. The Complainant asserts that he received only six (6) of twenty-four (24) remittance invoices (with check detail and corresponding purchase orders/vouchers

⁶ The amended request broadens the range of records responsive to Item No. 3 to any time period between January 1, 2008 and September 20, 2010 and not just from 2009-2010. The revised request also contains grammatical differences that increase readability.

and approved invoices). The Complainant also maintains that he only received a single contract and an addendum to such contract for the 2009-2010 school year. The Complainant asserts that he has not received all the invoices and records responsive to his request.

October 11, 2010

E-mail from the Custodian to the Complainant. The Custodian states that due to the volume of the Complainant's request, the earliest he would be able to reconcile the request would be October 29, 2010.

October 26, 2010

E-mail from the Complainant to the Custodian. The Complainant asks whether he can pick up the records responsive to his OPRA request.

November 1, 2010

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

- Complainant's OPRA request dated September 21, 2010⁷
- Custodian's response to the OPRA request September 20, 2010
- E-mail from the Complainant to the Custodian dated October 11, 2010
- E-mail from the Custodian to the Complainant dated October 11, 2010
- E-mail from the Complainant to the Custodian dated October 26, 2010

The Complainant states that on September 21, 2010, he submitted his OPRA request to the Lakewood Board of Education ("Board") via e-mail and certified mail. The Complainant asserts that although the request was dated September 20, 2010, the request was clearly marked with an annotation stating "Correction – 9/21/10" in the top left hand corner. The Complainant states that the Board did not completely fulfill his OPRA request. The Complainant argues that it is unlawful for the Board to request an extension of time to fulfill his request. The Complaint requests that the GRC ensure he receives the requested records in their entirety and that the Board responds to requests in a timely manner.

The Complainant does not agree to mediate this complaint.

November 10, 2010

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

March 29, 2011

Telephone call from the GRC to the Custodian. The GRC inquires why the Custodian failed to respond to the GRC's November 10, 2010 request for an SOI. The Custodian informs the GRC that Mr. Robert Finger, the original Custodian, is no longer with the Lakewood Board of Education.

⁷ This constitutes the September 20, 2010 OPRA request form as corrected on September 21, 2010.
Harry Hersh v. Lakewood Board of Education (Ocean), 2010-283 – Findings and Recommendations of the Executive Director

March 29, 2011

No Defense Letter from the GRC to the Custodian. The GRC sends a letter to the Custodian indicating that the GRC provided the Custodian with a request for an SOI on November 10, 2010 and to date has not received a response. Further, the GRC states that if the SOI is not submitted within three (3) business days, the GRC will adjudicate this complaint based solely on the information provided by the Complainant.

January 18, 2012

Telephone call from the GRC to the Custodian. The Custodian informs the GRC that the previous Custodian, Robert Green, is no longer with the Lakewood Board of Education.

January 18, 2012

Letter from the GRC to the Custodian. The GRC again forwards the March 29, 2011 No Defense Letter to the Custodian after being informed of a staffing change.

January 22, 2012⁸

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated September 21, 2010⁹
- Custodian's response to the OPRA request September 20, 2010
- E-mail from the Complainant to the Custodian dated October 4, 2010
- E-mail from the Custodian to the Complainant dated October 4, 2010
- E-mail from the Complainant to the Custodian dated October 4, 2010
- E-mail from the Complainant to the Custodian dated October 11, 2010
- E-mail from the Custodian to the Complainant dated October 11, 2010
- E-mail from the Complainant to the Custodian dated October 26, 2010¹⁰

The Custodian certifies that a Nonpublic Services Agreement for the 2009-2010 school year, a Monitoring Report dated June 3, 2010 and Board legal bills from July 1, 2009 to June 30, 2010 were provided to the Complainant on October 4, 2010. The Custodian certifies that none of the requested documents have been destroyed. The Custodian certifies that the Board of Education received the Complainant's OPRA request on September 20, 2010. The Custodian further certifies that the Board has had five (5) different records Custodians since the receipt of the Complainant's request.

March 2, 2012

Letter from the GRC to the Custodian. In furtherance of the GRC's investigation, the GRC requests the following additional information from the Custodian:

⁸ The Custodian did not certify to the search undertaken to locate the records responsive or whether any records responsive to the Complainant's OPRA request were destroyed in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management as is required pursuant to Paff v. NJ Department of Labor, 392 N.J. Super. 334 (App. Div. 2007).

⁹ This is the Complainant's September 20, 2010 OPRA request as corrected on September 21, 2010.

¹⁰ The Custodian attached additional documentation not relevant to the adjudication of this Complaint. Harry Hersh v. Lakewood Board of Education (Ocean), 2010-283 – Findings and Recommendations of the Executive Director

“Was Mr. Hersh at any time provided with all the invoices and contracts that are responsive to his request? If so, please include what date. If not, please state so. If no further records exist beyond those already supplied to him, please state so.”

March 5, 2012

Letter from the Custodian to the GRC. The Custodian certifies that the Complainant received the requested records on October 4, 2010. The Custodian further certifies that after receiving notice of the Complainant’s dissatisfaction with the October 4, 2010 response to his OPRA request, the Custodian provided the Complainant with all of responsive records on January 23, 2012. The Custodian certifies that the Complainant received all the existing records that are responsive to his request.

Analysis

Whether the Custodian timely responded to the Complainant’s OPRA request?

OPRA provides that:

“Immediate access ordinarily shall be granted to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information.” (Emphasis added.) N.J.S.A. 47:1A-5.e.

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 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.¹¹ 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 (Interim Order October 31, 2007).

Although the Complainant herein did not dispute the timeliness of the Custodian's response to his request, the evidence of record indicates that the Custodian failed to meet her statutory duty of providing immediate access to Item Nos. 1 and 2 requests for invoices, vouchers, bills,

It is clear that the responsive bills and invoices are specifically classified under OPRA as "immediate access" records pursuant to N.J.S.A. 47:1A-5.e. In Herron v. Township of Montclair, GRC Complaint No. 2006-178 (February 2007), the GRC held that "immediate access language of OPRA (N.J.S.A. 47:1A-5.e.) suggests that the Custodian was still obligated to immediately notify the Complainant..." Inasmuch as OPRA requires a custodian to respond within a statutorily required time frame, when immediate access records are requested, a custodian must respond to the request for those records immediately, granting or denying access, requesting additional time to respond or requesting clarification of the request.

OPRA requires a written response to an OPRA request. N.J.S.A. 47:1A-5.g. Although N.J.S.A. 47:1A-5.i. speaks directly to the seven (7) business day time frame, the provision carries a caveat for "shorter time [periods] ... otherwise provided by statute ..." Additionally, the Legislature clearly intended that all OPRA requests be responded to in writing by providing that custodians "... shall indicate the specific basis [for a denial of access] on the request form and promptly return it to the requestor." N.J.S.A. 47:1A-5.g. Had the Legislature intended to allow custodians to simply grant access to immediate access records without providing a written response, it would have included such language within N.J.S.A. 47:1A-5.e. Moreover, N.J.S.A. 47:1A-5.g. provides for no exceptions when responding to immediate access records.

When a Denial of Access Complaint is filed, a custodian of record bears the burden of proving a denial of access was lawful. N.J.S.A. 47:1A-6. As previously discussed, if a custodian fails to respond in writing within the statutorily mandated time frame, said failure results in a "deemed" denial of access. In complaints where it appears that a "deemed" denial may have occurred, the burden rests on the custodian to prove that he or she responded in writing in a timely manner. See Gonzales v. City of Gloucester (Camden), GRC Complaint No. 2008-255 (November 2009)(holding that the custodian failed to bear his burden of proof that he properly responded to the OPRA request.)

In Campbell v. Township of Downe (Cumberland), GRC Complaint No. 2009-219 (Interim Order dated January 25, 2011), the complainant requested, among other

¹¹ 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.

records, immediate access records. The GRC determined that immediate access records required an immediate response in writing:

“There is no evidence in the record to indicate that the original Custodian provided any written response to the Complainant’s March 24, 2009 OPRA request for electric bills ... within the statutorily mandated time frame, which in this instance would be immediately upon receipt of the Complainant’s OPRA request because the requested electric bills are immediate access records pursuant to N.J.S.A. 47:1A-5.e. As in Herron, supra, the original Custodian had a duty to respond immediately because the Complainant’s OPRA request sought immediate access records, *i.e.*, bills, pursuant to N.J.S.A. 47:1A-5.e.” *Id.* at pg. 12-13.

The Council held that the Custodian’s response “... [resulted] 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, supra, ... [and] violated N.J.S.A. 47:1A-5.e.” *Id.* at pg. 13.

Thus, a custodian’s response to an OPRA request for immediate access records must be in writing and made immediately upon receipt of said request in order to constitute a lawful response under OPRA. If a custodian fails to do so, said request is “deemed” denied. N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i. and Campbell, supra.

The facts of this complaint are similar to the facts in Campbell, as the Custodian herein did not provide an immediate written response to the Complainant’s request for immediate access records.

Thus, the Custodian’s failure to immediately respond in writing to the Complainant’s OPRA requests for immediate access records, *i.e.*, attorney bills, invoices and vouchers, and special education service contracts, 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, supra. *See also Campbell, supra*. However, the Council declines to order disclosure because the Custodian certified to the GRC on March 5, 2012 that the Complainant was provided all of the records responsive to his request on January 23, 2012.

Whether the Request Item No. 3 of the Complainant’s request is valid under OPRA?

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 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.

Here, the Complainant’s request is invalid under OPRA because it requires the Custodian to perform research to locate and identify responsive records as the Complainant has failed to name specifically identifiable 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). As the court noted in invalidating MAG’s request under OPRA:

“Most 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.* at 549.

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.*

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),¹² 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.”¹³

Additionally, in New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), the court enumerated the responsibilities of a custodian and a requestor as follows:

“OPRA identifies the responsibilities of the requestor and the agency relevant to the prompt access the law is designed to provide. The custodian, who is the person designated by the director of the agency, N.J.S.A. 47:1A-1.1, must adopt forms for requests, locate and redact documents, isolate exempt documents, assess fees and means of production, identify requests that require “extraordinary expenditure of time and effort” and warrant assessment of a “service charge,” and, when unable to comply with a request, “indicate the specific basis.” N.J.S.A. 47:1A-5(a)-(j). The requestor must pay the costs of reproduction and submit the request with information that is essential to permit the custodian to comply with its obligations. N.J.S.A. 47:1A-5(f), (g), (i). *Research is not among the custodian's responsibilities.*” (Emphasis added), NJ Builders, 390 N.J. Super. at 177.

Moreover, 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...” Accordingly, the test under MAG then, is whether a requested record is a *specifically identifiable* government record.

Under such rationale, the GRC has repeatedly found that blanket requests are not valid OPRA requests. In the matter of Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009), the relevant part of the Complainant’s request sought:

¹² Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

¹³ As stated in Bent, *supra*.

- “From the Borough Engineer’s files: all engineering documents for all developments or modifications to Block 25, Lot 28; Block 25, Lot 18; Block 23, Lot 1; Block 23, Lot 1.02.
- From the Borough Engineer’s files: all engineering documents for all developments or modifications to North St., to the south and east of Wilson St.
- From the Borough Attorney’s files: all documents related to the development or modification to Block 25, Lot 28; Block 25, Lot 18; Block 23, Lot 1; Block 23, Lot 1.02.
- From the Borough Attorney’s files: all documents related to the development or modification to North Street, to the south and east of Wilson St.”

In reviewing the Complainant’s request, the Council found 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).”

This matter is substantially different from the facts presented in Burnett v. County of Gloucester, 415 N.J. Super. 506 (App. Div. 2010). In Burnett, the plaintiff appealed from an order of summary judgment entered against him in his suit to compel production by the County of Gloucester of documents requested pursuant to OPRA, consisting of “[a]ny and all *settlements, releases or similar documents* entered into, approved or accepted from 1/1/2006 to present.” Id. at 508. (Emphasis added). The Appellate Division determined that the request sought a specific type of document, although it did not specify a particular case to which such document pertained, and was therefore not overly broad. Id. at 515-16.

In the instant matter, Request Item No. 3 of the Complainant’s request is expansive and all-encompassing, seeking “[a]ny and all New Jersey State or federal fiscal, managerial, or educational audits, reviews, monitoring reports or anything of a similar nature received in the period between January 1, 2008 and September 20, 2010 by the Lakewood Board of Education, as well as all correspondence relating to any such audits, reviews, [and] monitoring reports[.]” The records sought are dissimilar to each other and would require the Custodian to perform research to locate and determine records which could be responsive to the request. Additionally, the Complainant’s request for “anything of a similar nature” to the records listed fails to specify identifiable government records. Finally, the request for “correspondence relating to ... audits, reviews [and] monitoring reports” fails to specify identifiable government records and would require the Custodian to research all of the records in his possession to determine those that relate to the audits, reviews and monitoring reports sought by the Complainant.

Therefore, because Request Item No. 3 of the Complainant’s request fails to specify identifiable government records sought and would require the Custodian to conduct research outside the scope of the Custodian’s duties, this request item is invalid

under OPRA pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); and Burnett v. County of Gloucester, 415 N.J. Super. 506 (App. Div. 2010).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian's failure to immediately respond in writing to the Complainant's OPRA requests for immediate access records, i.e., attorney bills, invoices and vouchers, and special education service contracts, 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 (Interim Order October 31, 2007). *See also* Campbell v. Township of Downe (Cumberland), GRC Complaint No. 2009-219 (Interim Order dated January 25, 2011). However, the Council declines to order disclosure because the Custodian certified to the GRC on March 5, 2012 that the Complainant was provided all of the records responsive to his request on January 23, 2012.
2. Because Request Item No. 3 of the Complainant's request fails to specify identifiable government records sought and would require the Custodian to conduct research outside the scope of the Custodian's duties, this request item is invalid under OPRA pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); and Burnett v. County of Gloucester, 415 N.J. Super. 506 (App. Div. 2010).

Prepared By: Darryl C. Rhone
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

March 20, 2012