



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

RICHARD E. CONSTABLE, III  
Commissioner

**FINAL DECISION**

**September 25, 2012 Government Records Council Meeting**

Alice Chin  
Complainant

Complaint No. 2010-340

v.

Teaneck Community Charter School (Bergen)  
Custodian of Record

At the September 25, 2012 public meeting, the Government Records Council (“Council”) considered the September 18, 2012 Supplemental 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 timely complied with the Council’s August 28, 2012 Interim Order by providing all meeting agendas for the 2010-2011 school year (September, October, November) as required by the Council’s Order and simultaneously provided certified confirmation of compliance to the GRC within the five (5) business days.
2. The Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by failing to provide a specific anticipated date upon which access to the Complainant’s first (1<sup>st</sup>) OPRA request Item No. 2 would be granted. The Custodian also violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by failing to timely respond to and failing to address the Complainant’s preferred method of delivery to the Complainant’s second (2<sup>nd</sup>) OPRA request. The Custodian further violated N.J.S.A. 47:1A-1 when she merely directed the Complainant to TCCS’s website to obtain the agendas responsive to the Complainant’s second (2<sup>nd</sup>) OPRA request Item No. 2. However, the Complainant’s first (1<sup>st</sup>) and third (3<sup>rd</sup>) OPRA requests failed to specifically identify a government record sought. In addition the Custodian timely complied with the Council’s August 28, 2012 Interim Order and provided the Complainant with copies of the agendas responsive to the second (2<sup>nd</sup>) OPRA request Item No. 2. 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 25<sup>th</sup> Day of September, 2012

Robin Berg Tabakin, Chair  
Government Records Council

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

Denise Parkinson Vetti, Secretary  
Government Records Council

**Decision Distribution Date: October 1, 2012**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
September 25, 2012 Council Meeting**

**Alice Chin<sup>1</sup>  
Complainant**

**GRC Complaint No. 2010-340**

v.

**Teaneck Community Charter School (Bergen)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:<sup>3</sup>**

November 10, 2010 OPRA request:

1. All substitute teacher certifications held by any and all teacher's aides employed at the Teaneck Community Charter School ("TCCS").
2. Board of Trustees ("Board") resolution approving the teacher's aides' employment as substitute teachers.

December 7, 2010 OPRA request:

1. Copy of the unedited audio recording of the last Board meeting held on November 22, 2010.
2. All meeting agendas for the 2010-2011 school year (September, October, November).

December 15, 2010 OPRA request: All TCCS correspondences with Gina Miller and Lucia Ortiz aka Ebanks, including but not limited to reference to the Complainant's child, Board actions, OPRA requests, TCCS administration, grievances and grievance committee actions. This request also includes all correspondences with any and all Board members, TCCS administration and Friends of TCCS.

**Requests Made:** November 10, 2010, December 7, 2010 and December 15, 2010

**Response Made:** November 11, 2010, December 20, 2010 and January 10, 2011<sup>4</sup>

**Custodian:** Yonah Hirschman

**GRC Complaint Filed:** December 30, 2010<sup>5</sup>

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Joseph Sordillo, Esq., of McElroy, Deutsch, Mulvany & Carpenter, LLP (Morristown, NJ).

<sup>3</sup> The Complainant requested additional records not at issue in her complaint.

<sup>4</sup> The Custodian responded to the Complainant's request dated December 16, 2010 on December 22, 2010 and responded to the Complainant's request dated December 15, 2010 on January 10, 2011.

<sup>5</sup> The GRC received the Denial of Access Complaint on said date.

## Background

### **August 28, 2012**

Government Records Council's ("Council") Interim Order. At its August 28, 2012 public meeting, the Council considered the August 21, 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, found that:

1. Because the Complainant's cause of action for her third (3<sup>rd</sup>) OPRA request was not ripe at the time of the filing of this Denial of Access Complaint; to wit, the Custodian had not denied access to any records responsive to the OPRA request and the prescribed time frame for the Custodian to respond had not expired, this portion of the instant complaint is materially defective and therefore should be dismissed. *See Sallie v. NJ Department of Banking and Insurance*, GRC Complaint No. 2007-226 (April 2009).
2. Although Ms. Hirschman responded to the Complainant's first (1<sup>st</sup>) OPRA request Item No. 2 in writing in a timely manner, said response is insufficient pursuant to *Hardwick v. NJ Department of Transportation*, GRC Complaint No. 2007-164 (February 2008) and *N.J.S.A. 47:1A-5.i.* because she failed to provide a specific anticipated date upon which TCCS would grant access to the responsive records. *See also Verry v. Borough of South Bound Brook (Somerset)*, GRC Complaint No. 2008-48 (Interim Order dated March 25, 2009).
3. Ms. Hirschman did not timely respond to the Complainant's second (2<sup>nd</sup>) OPRA request. As such, Ms. Hirschman's failure to respond in writing to said 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 (Morris)*, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
4. Ms. Hirschman's response to the Complainant's second (2<sup>nd</sup>) OPRA request Item No. 1 is insufficient pursuant to *N.J.S.A. 47:1A- 5.g.*, *O'Shea v. Township of Fredon (Sussex)*, GRC Complaint Number 2007-251 (February 2008), and *Paff v. Borough of Sussex (Sussex)*, GRC Complaint Number 2008-38 (July 2008), because she failed to address the Complainant's preferred method of delivery (copy of audio recording) and instead offered for the Complainant to come to the Board of Trustees' offices to listen to the audio recording. However, the Council declines to order the Custodian to provide a copy of the audio recording responsive to request Item No. 1 because the Custodian made this audio recording responsive available for pickup on December 22, 2010.

5. Ms. Hirschman violated N.J.S.A. 47:1A-1 pursuant to Kaplan v. Winslow Township Board of Education (Camden), GRC Complaint No. 2009-148. *See* Windish v. Mount Arlington Public Schools (Morris), GRC Complaint No. 2005-216 (August 2006) and Langford v. City of Perth Amboy (Middlesex), 2005-181 (March 2007) when she merely directed the Complainant to TCCS's website to obtain the agendas responsive to the Complainant's second (2<sup>nd</sup>) OPRA request Item No. 2 and failed to provide the Complainant with copies of same. Instead, Ms. Hirschman should have provided the Complainant access to the requested records. Further, because there is no evidence in the record that Ms. Hirschman ever provided the Complainant copies of these agendas responsive, the Custodian must provide copies of said agendas to the Complainant.
6. **The Custodian shall comply with Item No. 5 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>6</sup> to the Executive Director.<sup>7</sup>**
7. Because the Complainant's first (1<sup>st</sup>) and third (3<sup>rd</sup>) requests fail to identify a specific government record sought, such requests are 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, 37 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
8. Although there was no official Custodian of Records at the time of the Complainant's OPRA request, Ms. Hirschman assumed that role by responding to the Complainant's OPRA requests and by completing the Statement of Information pursuant to N.J.S.A. 47:1A-1.1.
9. Because the language of N.J.S.A. 47:1A-5.e. is clear as to which specific records are classified as "immediate access" records (budgets, bills, vouchers, contracts, public employee salary and overtime information.), the GRC declines to determine that meeting minutes and resolutions are also "immediate access" records.

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<sup>6</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

<sup>7</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

10. The Council defers analysis of whether Ms. Hirschman knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

**August 29, 2012**

Council's Interim Order distributed to the parties.

**August 31, 2012**

Letter and e-mail from the Custodian to the Complainant. The Custodian attaches all the records responsive to the OPRA request dated December 7, 2010 Item No. 2, *i.e.* all meeting agendas for the 2010-2011 school year (September, October, November), pursuant to the Council's Interim Order.

**September 5, 2012**

Custodian's response to the Council's Interim Order. The Custodian responds via letter to the GRC attaching the following:

1. Certified confirmation of compliance dated August 31, 2012
2. Letter from the Custodian to the Complainant dated August 31, 2012
3. All meeting agendas for the 2010-2011 school year.

**Analysis**

**Whether the Custodian complied with the Council's August 28, 2012 Interim Order?**

At its August 28, 2012 meeting, the Council ordered the Custodian to provide the Complainant copies of all the records responsive to the second (2<sup>nd</sup>) OPRA request Item No. 2, *i.e.* all meeting agendas for the 2010-2011 school year (September, October, November). The Council ordered the Custodian to do so within five (5) business days of receipt of said Order. The Council disseminated its Interim Order to the parties on August 29, 2012. Thus, the Custodian's response was due by close of business on September 6, 2012.

On September 5, 2012, the Custodian provided certified confirmation of compliance to the Executive Director that the Custodian provided all meeting agendas for the 2010-2011 school year (September, October, November) to the Complainant on August 31, 2012.

Therefore, the Custodian timely complied with the Council's August 28, 2012 Interim Order by providing all meeting agendas for the 2010-2011 school year (September, October, November) as required by the Council's Order and provided certified confirmation of compliance to the GRC within the five (5) business days.

**Whether the Custodian’s actions rise 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).

The Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by failing to provide a specific anticipated date upon which access to the Complainant’s first (1<sup>st</sup>) OPRA request Item No. 2 would be granted. The Custodian also violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by failing to timely respond to and failing to address the Complainant’s preferred method of delivery to the Complainant’s second (2<sup>nd</sup>) OPRA request. The Custodian further violated N.J.S.A. 47:1A-1 when she merely directed the Complainant to TCCS’s website to obtain the agendas responsive to the Complainant’s second (2<sup>nd</sup>) OPRA request Item No. 2. However, the Complainant’s first (1<sup>st</sup>) and third (3<sup>rd</sup>) OPRA requests failed to specifically identify a government record sought. In addition the Custodian timely complied with the Council’s August 28, 2012 Interim Order and provided the Complainant with copies of the agendas responsive to the second (2<sup>nd</sup>) OPRA request Item No. 2. 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. The Custodian timely complied with the Council's August 28, 2012 Interim Order by providing all meeting agendas for the 2010-2011 school year (September, October, November) as required by the Council's Order and simultaneously provided certified confirmation of compliance to the GRC within the five (5) business days.
  
2. The Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by failing to provide a specific anticipated date upon which access to the Complainant's first (1<sup>st</sup>) OPRA request Item No. 2 would be granted. The Custodian also violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by failing to timely respond to and failing to address the Complainant's preferred method of delivery to the Complainant's second (2<sup>nd</sup>) OPRA request. The Custodian further violated N.J.S.A. 47:1A-1 when she merely directed the Complainant to TCCS's website to obtain the agendas responsive to the Complainant's second (2<sup>nd</sup>) OPRA request Item No. 2. However, the Complainant's first (1<sup>st</sup>) and third (3<sup>rd</sup>) OPRA requests failed to specifically identify a government record sought. In addition the Custodian timely complied with the Council's August 28, 2012 Interim Order and provided the Complainant with copies of the agendas responsive to the second (2<sup>nd</sup>) OPRA request Item No. 2. 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: Karyn Gordon, Esq.  
Acting Executive Director

September 18, 2012





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

RICHARD E. CONSTABLE, III  
Commissioner

INTERIM ORDER

August 28, 2012 Government Records Council Meeting

Alice Chin  
Complainant

Complaint No. 2010-340

v.

Teaneck Community Charter School (Bergen)  
Custodian of Record

At the August 28, 2012 public meeting, the Government Records Council (“Council”) considered the August 21, 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. Because the Complainant’s cause of action for her third (3<sup>rd</sup>) OPRA request was not ripe at the time of the filing of this Denial of Access Complaint; to wit, the Custodian had not denied access to any records responsive to the OPRA request and the prescribed time frame for the Custodian to respond had not expired, this portion of the instant complaint is materially defective and therefore should be dismissed. *See Sallie v. NJ Department of Banking and Insurance*, GRC Complaint No. 2007-226 (April 2009).
2. Although Ms. Hirschman responded to the Complainant’s first (1<sup>st</sup>) OPRA request Item No. 2 in writing in a timely manner, said response is insufficient pursuant to *Hardwick v. NJ Department of Transportation*, GRC Complaint No. 2007-164 (February 2008) and N.J.S.A. 47:1A-5.i. because she failed to provide a specific anticipated date upon which TCCS would grant access to the responsive records. *See also Verry v. Borough of South Bound Brook (Somerset)*, GRC Complaint No. 2008-48 (Interim Order dated March 25, 2009).
3. Ms. Hirschman did not timely respond to the Complainant’s second (2<sup>nd</sup>) OPRA request. As such, Ms. Hirschman’s failure to respond in writing to said 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 (Morris)*, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
4. Ms. Hirschman’s response to the Complainant’s second (2<sup>nd</sup>) OPRA request Item No. 1 is insufficient pursuant to N.J.S.A. 47:1A- 5.g., *O’Shea v. Township of Fredon (Sussex)*, GRC Complaint Number 2007-251 (February 2008), and *Paff v. Borough*



- of Sussex (Sussex), GRC Complaint Number 2008-38 (July 2008), because she failed to address the Complainant's preferred method of delivery (copy of audio recording) and instead offered for the Complainant to come to the Board of Trustees' offices to listen to the audio recording. However, the Council declines to order the Custodian to provide a copy of the audio recording responsive to request Item No. 1 because the Custodian made this audio recording responsive available for pickup on December 22, 2010.
5. Ms. Hirschman violated N.J.S.A. 47:1A-1 pursuant to Kaplan v. Winslow Township Board of Education (Camden), GRC Complaint No. 2009-148. See Windish v. Mount Arlington Public Schools (Morris), GRC Complaint No. 2005-216 (August 2006) and Langford v. City of Perth Amboy (Middlesex), 2005-181 (March 2007) when she merely directed the Complainant to TCCS's website to obtain the agendas responsive to the Complainant's second (2<sup>nd</sup>) OPRA request Item No. 2 and failed to provide the Complainant with copies of same. Instead, Ms. Hirschman should have provided the Complainant access to the requested records. Further, because there is no evidence in the record that Ms. Hirschman ever provided the Complainant copies of these agendas responsive, the Custodian must provide copies of said agendas to the Complainant.
  6. **The Custodian shall comply with Item No. 5 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>1</sup> to the Executive Director.<sup>2</sup>**
  7. Because the Complainant's first (1<sup>st</sup>) and third (3<sup>rd</sup>) requests fail to identify a specific government record sought, such requests are 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, 37 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
  8. Although there was no official Custodian of Records at the time of the Complainant's OPRA request, Ms. Hirschman assumed that role by responding to the Complainant's OPRA requests and by completing the Statement of Information pursuant to N.J.S.A. 47:1A-1.1.
  9. Because the language of N.J.S.A. 47:1A-5.e. is clear as to which specific records are classified as "immediate access" records (budgets, bills, vouchers, contracts, public employee salary and overtime information.), the GRC declines to determine that meeting minutes and resolutions are also "immediate access" records.

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<sup>1</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

<sup>2</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

10. The Council defers analysis of whether Ms. Hirschman knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the  
Government Records Council  
On The 28<sup>th</sup> Day of August, 2012

Robin Berg Tabakin, Chair  
Government Records Council

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

Denise Parkinson Vetti, Secretary  
Government Records Council

**Decision Distribution Date: August 29, 2012**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
August 28, 2012 Council Meeting**

**Alice Chin<sup>1</sup>  
Complainant**

**GRC Complaint No. 2010-340**

v.

**Teaneck Community Charter School (Bergen)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:<sup>3</sup>**

November 10, 2010 OPRA request:

1. All substitute teacher certifications held by any and all teacher's aides employed at the Teaneck Community Charter School ("TCCS").
2. Board of Trustees ("Board") resolution approving the teacher's aides' employment as substitute teachers.

December 7, 2010 OPRA request:

1. Copy of the unedited audio recording of the last Board meeting held on November 22, 2010.
2. All meeting agendas for the 2010-2011 school year (September, October, November).

December 15, 2010 OPRA request: All TCCS correspondences with Gina Miller and Lucia Ortiz aka Ebanks, including but not limited to reference to the Complainant's child, Board actions, OPRA requests, TCCS administration, grievances and grievance committee actions. This request also includes all correspondences with any and all Board members, TCCS administration and Friends of TCCS.

**Requests Made:** November 10, 2010, December 7, 2010 and December 15, 2010

**Response Made:** November 11, 2010, December 20, 2010 and January 10, 2011<sup>4</sup>

**Custodian:** David Deubel<sup>5</sup>

**GRC Complaint Filed:** December 30, 2010<sup>6</sup>

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Joseph Sordillo, Esq., of McElroy, Deutsch, Mulvany & Carpenter, LLP (Morristown, NJ).

<sup>3</sup> The Complainant requested additional records not at issue in her complaint.

<sup>4</sup> The Custodian responded to the Complainant's request dated December 16, 2010 on December 22, 2010 and responded to the Complainant's request dated December 15, 2010 on January 10, 2011.

<sup>5</sup> The Board appointed Mr. Deubel as Custodian on January 10, 2011. Ms. Yonah Hirschman, Secretary of the Board, was not the official Custodian at the time of the Complainant's OPRA requests, Denial of Access Complaint and Statement of Information, although she responded to the Complainant's OPRA requests.

<sup>6</sup> The GRC received the Denial of Access Complaint on said date.

## Background

### **November 10, 2010**

Complainant's first (1<sup>st</sup>) Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above in an e-mail referencing OPRA.

### **November 11, 2010**

Ms. Yonah Hirschman's, Secretary of the Board, ("Ms. Hirschman"), response to the first (1<sup>st</sup>) OPRA request. Ms. Hirschman responds to the Complainant's OPRA request on the first (1<sup>st</sup>) business day following receipt of such request when the Complainant visits TCCS. Ms. Hirschman provides to the Complainant copies of the two (2) substitute teacher certifications responsive to the Complainant's OPRA request dated November 10, 2010 for Item No. 1.<sup>7</sup>

### **November 12, 2010**

E-mail from the Complainant to Ms. Hirschman. The Complainant thanks Ms. Hirschman for copies of the two (2) substitute teacher certificates from Mr. Corey Goodall ("Mr. Goodall") and Mrs. Addy Orrs-Mederos ("Ms. Orrs-Mederos") responsive to the Complainant's first (1<sup>st</sup>) OPRA request Item No. 1. The Complainant asks if Mr. Goodall and Ms. Orrs-Mederos are the only teacher aides that are substitute teacher certified. The Complainant also asks if other teacher aides at TCCS hold other teaching certificates that allow them to serve as a substitute teacher. The Complainant states that if the answer is yes, then she requests a copy of those certificates and the Board's resolution to appoint them as substitute teachers. The Complainant states that she is still waiting for the Board resolutions responsive to the first (1<sup>st</sup>) OPRA request Item No. 2.

### **November 16, 2010**

E-mail from the Complainant to Ms. Hirschman. The Complainant states that Ms. Hirschman has not provided her with copies of resolutions responsive to the first (1<sup>st</sup>) OPRA request Item No. 2. The Complainant also states that she must respond to a request as soon as possible, but not later than seven (7) business days after receipt of such request. The Complainant also states that certain records such as invoices, vouchers and minutes are subject to the immediate access provision of N.J.S.A. 47:1A-5.e.<sup>8</sup>

### **November 17, 2010**

E-mail from the Ms. Hirschman to the Complainant. Ms. Hirschman states that teacher aides at TCCS are full-time salaried employees. Ms. Hirschman also states that TCCS operates with the understanding that these employees can be utilized as needed at the discretion of the administration. Ms. Hirschman further states that her office is still trying to locate copies of the resolutions for Mr. Goodall and Ms. Orrs-Mederos responsive to the Complainant's first (1<sup>st</sup>) OPRA request Item No. 2. Ms. Hirschman states that the Complainant will be notified when such resolutions are available.

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<sup>7</sup> The Custodian does not provide any Board resolutions responsive to the Complainant's first (1<sup>st</sup>) OPRA request Item No. 2.

<sup>8</sup> "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." N.J.S.A. 47:1A-5.e. Minutes are not considered immediate access records.

**November 17, 2010**

E-mail from the Complainant to Ms. Hirschman. The Complainant states that under OPRA, minutes and resolutions are to be provided immediately. The Complainant also states that she does not understand the delay in providing these resolutions.

**November 19, 2010**

E-mail from the Complainant to Ms. Hirschman. The Complainant states that Principal Bowie provided her with the resolutions for Mr. Goodall and Ms. Orrs-Mederos responsive to the first (1<sup>st</sup>) OPRA request Item No. 2 on this day.

**December 7, 2010**

Complainant's second (2<sup>nd</sup>) OPRA request. The Complainant requests the records relevant to this complaint listed above in an e-mail referencing OPRA.

**December 15, 2010**

Complainant's third (3<sup>rd</sup>) OPRA request. The Complainant requests the records relevant to this complaint listed above in an e-mail referencing OPRA.

**December 20, 2010**

E-mail from the Complainant to Ms. Hirschman. The Complainant states that she is following up on the second (2<sup>nd</sup>) OPRA request. The Complainant also states that she has not received the records responsive to said request or a written response and states that the seven (7) business day time period has expired. The Complainant states that she is now affording Ms. Hirschman and the Board a chance to provide the records before she files a complaint with the GRC.

**December 20, 2010**

Ms. Hirschman's response to the second (2<sup>nd</sup>) OPRA request. Ms. Hirschman responds in writing via e-mail to the Complainant's OPRA request on the ninth (9<sup>th</sup>) business day following receipt of such request. Ms. Hirschman states that she e-mailed the Complainant on December 15, 2010 indicating that the agendas responsive to request Item No. 2 are posted to the website.<sup>9</sup> Ms. Hirschman also states that according to her e-mail dated December 15, 2010, the Complainant could visit the Board offices between 9:30 a.m. and 11:30 a.m. Monday through Wednesday to listen to the audio recording of the meeting for request Item No. 1.<sup>10</sup>

**December 20, 2010**

E-mail from the Complainant to Ms. Hirschman. The Complainant states that she did not receive Ms. Hirschman's e-mail dated December 15, 2010 advising that she could listen to the audio recording responsive to the Complainant's second (2<sup>nd</sup>) OPRA request Item No. 1. The Complainant states that she requested a copy of this audio recording and inquires when she can pick up a copy of this audio recording.

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<sup>9</sup> Ms. Hirschman subsequently certified on July 25, 2012 that although she drafted a response on December 15, 2010 she did not send same.

<sup>10</sup> The Complainant did not include a copy of this e-mail in her Denial of Access Complaint. In addition, Ms. Hirschman does not include a copy of this e-mail in her SOI.

**December 20, 2010**

E-mail from Ms. Hirschman to the Complainant. Ms. Hirschman states that with regards to the recording responsive to the Complainant's second (2<sup>nd</sup>) OPRA request Item No. 1, the Complainant may come to the Board offices on Monday through Wednesday between the hours of 9:30 a.m. and 11:30 a.m. to listen to the recording. Ms. Hirschman states that inspection is provided for pursuant to N.J.S.A. 47:1A-5.a. Ms. Hirschman requests that the Complainant notify the Board offices in advance so that a listening station can be set up to not interfere with the school's operations.

Ms. Hirschman states that the meeting agendas responsive to the Complainant's second (2<sup>nd</sup>) OPRA request Item No. 2 are posted to the website at <http://sites.google.com/a/tccsnj.org/tccs-board-agendas-and-minutes/agendas-1>.

**December 21, 2010**

E-mail from the Complainant to Ms. Hirschman. The Complainant states that pursuant to N.J.S.A. 47:1A-5.d., a custodian is required to provide a record in the medium requested. The Complainant states that she is seeking a copy of the recording for the Board's November 22, 2010 meeting. The Complainant states she is willing to provide a blank CD for the school's purpose of copying the responsive recording. The Complainant states she is cancelling her appointment on December 22, 2010 to listen to the recording. The Complainant requests that she receive the recording no later than December 23, 2010 prior to the school going on holiday recess.

**December 22, 2010**

E-mail from the Complainant to Ms. Hirschman. The Complainant states that she dropped off a blank CD so that Ms. Hirschman could provide her with the audio recording responsive to the Complainant's second (2<sup>nd</sup>) OPRA request Item No. 1.

**December 22, 2010**

E-mail from the Custodian to the Complainant. The Custodian further states that the recording responsive to the Complainant's second (2<sup>nd</sup>) OPRA request Item No. 1 is available for pickup on this day before 3:30 p.m. and on December 23, 2010 between 8:30 a.m. and 12:00 p.m.

**December 30, 2010**

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

- Complainant's first (1<sup>st</sup>) OPRA request dated November 10, 2010
- E-mail from the Complainant to Ms. Hirschman dated November 12, 2010
- E-mail from the Complainant to Ms. Hirschman dated November 16, 2010
- E-mail from Ms. Hirschman to the Complainant dated November 17, 2010
- E-mail from the Complainant to Ms. Hirschman dated November 17, 2010
- Complainant's second (2<sup>nd</sup>) OPRA request dated December 7, 2010
- E-mail from the Complainant to Ms. Hirschman dated December 20, 2010
- E-mail from Ms. Hirschman to the Complainant dated December 20, 2010
- E-mail from the Complainant to Ms. Hirschman dated December 20, 2010

- E-mail from Ms. Hirschman to the Complainant dated December 20, 2010
- E-mail from the Complainant to Ms. Hirschman dated December 21, 2010
- E-mail from the Complainant to Ms. Hirschman dated December 22, 2010
- E-mail from the Custodian to the Complainant dated December 22, 2010<sup>11</sup>

Complainant’s first (1<sup>st</sup>) OPRA request:

The Complainant states that she submitted an OPRA request on November 10, 2010 and requested copies of 1) all substitute teacher certifications held by any and all teacher’s aides employed at TCCS; 2) Board of Trustees resolution approving the teacher’s aides’ employment as substitute teachers. The Complainant states that she has not yet received all the substitute teacher certifications responsive to request Item No. 1. The Complainant also states that on November 23, 2010, Ms. Hirschman informed her that she followed proper procedures, but failed to provide a date certain when the records responsive would be provided.

Complainant’s second (2<sup>nd</sup>) OPRA Request:

The Complainant states that she submitted an OPRA request on December 7, 2010 requesting 1) a copy of the audio recording from the November 22, 2010 Board meeting and 2) all meeting agendas for the 2010-2011 school year (September, October, November). The Complainant also states that the Custodian failed to respond to her OPRA request within seven (7) business days.

Complainant’s third (3<sup>rd</sup>) OPRA Request:

The Complainant states that she filed an OPRA request on December 15, 2010 for “all TCCS correspondences with Gina Miller and Lucria Ortiz aka Ebanks, including but not limited to reference to the Complainant’s child, Board actions, OPRA requests, TCCS administration, grievances and grievance committee actions. This request also includes all correspondences with any and all trustee members, TCCS administration and Friends of TCCS.” The Complainant also states that the Custodian failed to respond to her OPRA request within the seven (7) business days.

The Complainant does not agree to mediate this complaint.

**January 6, 2011**

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

**January 10, 2011**

Ms. Hirschman’s response to the Complainant’s third (3<sup>rd</sup>) OPRA request attaching 12 pages of records. Ms. Hirschman responds to the Complainant’s OPRA request on the twelfth (12<sup>th</sup>) business day following receipt of such request. Ms. Hirschman certifies that a response was due by close of business on January 3, 2011; however, it is her understanding that the Complainant filed a complaint with the GRC on

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<sup>11</sup> The Complainant does not include copies of her OPRA requests dated December 15, 2010 and December 16, 2010.



December 29, 2010. Ms. Hirschman further notes that the TCCS does not yet have an official custodian of record.

Ms. Hirschman states that copies of the correspondence received by the Board that referenced the Complainant and the Complainant's child and responsive to the Complainant's third (3<sup>rd</sup>) OPRA request are attached. Ms. Hirschman further states that a printout of all the responsive records were also provided via e-mail earlier in the day.

Ms. Hirschman further states that there are no Board actions or OPRA requests responsive to the Complainant's request. Ms. Hirschman also states that the Board does not have access to Grievance Committee minutes or records. Ms. Hirschman further states that to the best of her knowledge, no grievances that reference the Complainant or the Complainant's child exist. Lastly, Ms. Hirschman states that concerning the Friends of TCCS, this is a separate private group from TCCS and the Board does not have access to their records. Ms. Hirschman certifies that she provided every record the Complainant has requested in each of her OPRA requests.

#### **January 11, 2011<sup>12</sup>**

Ms. Hirschman's SOI with the following attachments:

- Complainant's first (1<sup>st</sup>) OPRA request dated November 10, 2010
- E-mail from the Complainant to Ms. Hirschman dated November 12, 2010
- E-mail from the Complainant to Ms. Hirschman dated November 16, 2010
- E-mail from Ms. Hirschman to the Complainant dated November 17, 2010
- E-mail from the Complainant to Ms. Hirschman dated November 17, 2010
- Complainant's second (2<sup>nd</sup>) OPRA request dated December 7, 2010
- Complainant's third (3<sup>rd</sup>) OPRA request dated December 15, 2010
- E-mail from the Complainant to Ms. Hirschman dated December 20, 2010
- E-mail from Ms. Hirschman to the Complainant dated December 20, 2010
- E-mail from the Complainant to Ms. Hirschman dated December 20, 2010
- E-mail from Ms. Hirschman to the Complainant dated December 20, 2010
- E-mail from the Complainant to Ms. Hirschman dated December 21, 2010
- E-mail from the Custodian to the Complainant dated December 22, 2010
- E-mail from Ms. Hirschman to the Complainant dated January 10, 2011 (with attachments)

Ms. Hirschman certifies that TCCS appointed the Custodian to his position at its most recent Board meeting on January 10, 2011. Ms. Hirschman also certifies that until January 10, 2011 TCCS had no official custodian of records.

Ms. Hirschman states that OPRA requires a custodian to respond to an OPRA request "... as soon as possible, but not later than seven [(7)] business days after receiving the request." N.J.S.A. 47:1A-5.i. Ms. Hirschman states that it is her

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<sup>12</sup> 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 Records Management Services as is required pursuant to Paff v. NJ Department of Labor, 392 N.J. Super. 334 (App. Div. 2007).

understanding that the first (1<sup>st</sup>) day is the day following receipt of said request. Ms. Hirschman certifies that as an example, she received the Complainant's third (3<sup>rd</sup>) OPRA request on December 15, 2010; thus, the first (1<sup>st</sup>) business day was December 16, 2010. Ms. Hirschman certifies that TCCS was closed from December 24, 2010 through January 3, 2011. Ms. Hirschman further certifies that based on her calculations, a response was due on January 3, 2011, but the Complainant filed a Denial of Access Complaint on December 29, 2010.

Ms. Hirschman finally certifies that all records the Complainant has requested have been provided to her

### **January 11, 2011**

E-mail from Ms. Hirschman to the Complainant. Ms. Hirschman states that copies of the correspondence received by the Board that referenced the Complainant and the Complainant's child and responsive to the Complainant's third (3<sup>rd</sup>) OPRA request are available for pickup at the Board office. Ms. Hirschman further states that a printout of all the responsive records was also provided via e-mail earlier in the day.

### **January 31, 2011**

E-mail from the Complainant to the GRC. The Complainant asserts that the Board and administrators work on an administrative calendar and not a school calendar and thus even if the school is not in session the Custodian is still responsible for responding to OPRA requests.

The Complainant further asserts that the failure of TCCS to appoint a records custodian does not relieve TCCS of its responsibility to respond to OPRA requests. The Complainant further asserts that the Board Secretary legislatively would act as the records custodian for records pertaining to the TCCS Board. The Complainant additionally asserts that the Board's failure to appoint a custodian was a deliberate attempt to circumvent their legislative responsibility to respond to OPRA requests.

### **July 20, 2012**

Letter from the GRC to Ms. Hirschman. The GRC states that its regulations provide that "[t]he Council, acting through its Executive Director, may require custodians to submit, within prescribed time limits, additional information deemed necessary for the Council to adjudicate the complaint." *N.J.A.C. 5:105-2.4(1)*. The GRC states that it has reviewed the parties' submissions and has determined that additional information is required.

The GRC states that in an e-mail to the Complainant dated December 20, 2010, Ms. Hirschman indicated that she sent an e-mail to the Complainant on December 15, 2010 responding to the Complainant's second (2<sup>nd</sup>) OPRA request. The GRC states that this e-mail, however, was not included as part of the SOI or any subsequent mailing.

The GRC requests thus requests a legal certification, pursuant to N.J. Court Rule 1:4-4, in response to the following questions:

1. Did Mr. Hirschman respond to the Complainant's December 7, 2010 OPRA request via e-mail on December 15, 2010? If so, please provide any supporting documentation to include the actual e-mail.

The GRC requests that Ms. Hirschman provide the requested legal certification by close of business on July 25, 2012. The GRC further advises that submissions received after this deadline date may not be considered by the Council for adjudication.

**July 24, 2012**

E-mail from Ms. Hirschman to the GRC. Ms. Hirschman requests an extension of time until July 27, 2012 to submit the legal certification.

**July 24, 2012**

E-mail from the GRC to Ms. Hirschman. The GRC grants Ms. Hirschman an extension of time until July 27, 2012 to submit the legal certification.

**July 25, 2012**

Ms. Hirschman's legal certification with no attachments. Ms. Hirschman certifies that at the time of the filing of this complaint, she served as Secretary for the Board and was charged with responding to OPRA requests submitted to TCCS.

Ms. Hirschman certifies that in her e-mail to the Complainant dated December 20, 2010, she indicates that she previously responded to the Complainant's second (2<sup>nd</sup>) OPRA request via e-mail on December 15, 2010. Ms. Hirschman certifies that she searched through her e-mails and also requested that other employees at TCCS attempt to locate the e-mail; however, said e-mail cannot be located. Ms. Hirschman certifies that the only conclusion that she can reach is that although she drafted an e-mail on December 15, 2010, same was never sent to the Complainant. Ms. Hirschman thus certifies that it appears as though she violated OPRA by failing to respond in a timely manner to the Complainant's second (2<sup>nd</sup>) OPRA request. Ms. Hirschman further certifies that her failure to respond in a timely manner was not intentional.

Ms. Hirschman certifies that upon receiving the Complainant's December 20, 2010 e-mail, she immediately responded in an attempt to accommodate the Complainant's OPRA request.<sup>13</sup>

Ms. Hirschman certifies that she is an elected official and spends limited hours at TCCS. Ms. Hirschman certifies that she must rely on TCCS employees to provide records in order to timely respond to OPRA request. Ms. Hirschman certifies that although she mistakenly failed to respond to the Complainant's second (2<sup>nd</sup>) OPRA request, said mistake does not amount to a knowing and willful violation of OPRA. Ms. Hirschman certifies that herself and employees of TCCS make every attempt to properly fulfill OPRA requests submitted to TCCS.

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<sup>13</sup> Ms. Hirschman notes that at the time of the Complainant's OPRA requests at issue herein and through the pendency of this complaint, she has been available for periods of time due to personal reasons.  
Alice Chin v. Teaneck Community Charter School (Bergen), 2010-340 – Findings and Recommendations of the Executive Director 8

## Analysis

### **Whether the Complainant's third (3<sup>rd</sup>) OPRA request is ripe for adjudication?**

OPRA provides that:

“[a] person who is denied access to a government record by the custodian of the record, at the option of the requestor, may: institute a proceeding ... by filing an action in Superior Court ... or in lieu of filing an action in Superior Court, file a complaint with the Government Records Council ...” N.J.S.A. 47:1A-6.

OPRA further provides that:

“[t]he Government Records Council shall ... receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian ...” N.J.S.A. 47:1A-7.b.

As one means of challenging denials of access to a government record, OPRA provides for the filing of a complaint with the GRC. N.J.S.A. 47:1A-6. In order for such a complaint to be ripe, a complainant must have been denied access to a government record. In the instant matter, however, the Complainant filed this complaint with the GRC prior to being denied access to any records responsive to her third (3<sup>rd</sup>) OPRA request.

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5.i. As also prescribed under N.J.S.A. 47:1A-5.i, a custodian's failure to respond within the required seven (7) business days results in a “deemed” denial. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5.g. Thus, a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g, N.J.S.A. 47:1A-5.i, and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

In the matter currently before the Council, Ms. Hirschman certified in the SOI that she received the Complainant's third (3<sup>rd</sup>) OPRA request on December 15, 2010. Ms. Hirschman certified that TCCS was closed from December 24, 2010 until January 3, 2011. The Custodian certified that according to her calculation, the seventh (7<sup>th</sup>) business day to respond was January 3, 2011; however, the Complainant filed this complaint with the GRC on December 30, 2010. The Complainant e-mailed the GRC on January 31, 2011 contending that regardless of the fact that TCCS was closed, the administration works on an administrative calendar and was still responsible for responding to the third (3<sup>rd</sup>) OPRA request. However, the Complainant provided no competent, credible evidence to refute Ms. Hirschman's certification that TCCS offices were closed from December 24, 2010 and December 31, 2010. Thus, the evidence of record indicates that

the Complainant filed this portion of the complaint prior to being denied access to any records either through a written response or a “deemed” denial.

In Sallie v. NJ Department of Banking and Insurance, GRC Complaint No. 2007-226 (April 2009), the complainant forwarded a complaint to the GRC asserting that he had not received a response from the custodian and seven (7) business days would have passed by the time the GRC received the Denial of Access Complaint. The custodian argued in the SOI that the complainant filed the complaint prior to the expiration of the statutorily mandated seven (7) business day time frame set forth in N.J.S.A. 47:1A-5.i. The Council held that:

“...because the Complainant’s cause of action was not ripe at the time he verified his Denial of Access Complaint; to wit, the Custodian had not at that time denied the Complainant access to a government record, the complaint is materially defective and therefore should be dismissed.”

The Complainant herein acted in a similar manner as the complainant in Sallie, supra, by filing a Denial of Access Complaint with the GRC prior to any denial of access to her third (3<sup>rd</sup>) OPRA request. Specifically, the Complainant filed this portion of her complaint prior to Ms. Hirschman’s response and prior to the expiration of the prescribed time frame to respond; thus, the required denial of access did not exist at the time of the filing of this complaint.

Therefore, because the Complainant’s cause of action for her third (3<sup>rd</sup>) OPRA request was not ripe at the time of the filing of this Denial of Access Complaint; to wit, the Custodian had not denied access to any records responsive to the OPRA request and the prescribed time frame for the Custodian to respond had not expired, this portion of the instant complaint is materially defective and therefore should be dismissed. *See Sallie, supra*.

**Whether Ms. Hirschman sufficiently responded to the Complainant’s first (1<sup>st</sup>) OPRA request?**

OPRA 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 ... If the government record is in storage or archived, the requestor shall be so advised within seven business days after the custodian receives the request ... when the record can be made available. If the record is not made available by that time, access shall be deemed denied.”* (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.

Ms. Hirschman responded to the Complainant’s first (1<sup>st</sup>) OPRA request initially on November 11, 2010 and again on November 17, 2010. In her November 17, 2010 response, Ms. Hirschman stated that she would notify the Complainant when the resolutions responsive to request Item No. 2 would be available. However, Ms. Hirschman failed to provide a date certain on which she would grant access to the responsive records.

OPRA provides that a custodian may request an extension of time to respond to a complainant’s OPRA request, but a specific date when the custodian will respond must be provided. N.J.S.A. 47:1A-5.i. OPRA further provides that should the custodian fail to provide a response on that specific date, “access shall be deemed denied.” N.J.S.A. 47:1A-5.i.

In Hardwick v. NJ Department of Transportation, GRC Complaint No. 2007-164 (February 2008), the custodian provided the complainant with a written response to his request on the seventh (7<sup>th</sup>) business day following receipt of such request in which the custodian requested an extension of time to fulfill said request but failed to notify the complainant of when the requested records would be provided. The Council held that the custodian’s response was insufficient:

“...because the Custodian failed to notify the Complainant in writing within the statutorily mandated seven (7) business days of when the requested records would be made available pursuant to N.J.S.A. 47:1A-5.i., the Custodian’s written response to the Complainant dated June 20, 2007 and the request for an extension of time dated June 29, 2007 are inadequate under OPRA ...” *Id.*

In the instant complaint, the evidence of record indicates that the Ms. Hirschman responded to the Complainant's OPRA request Item No. 2 in writing within the prescribed time frame stating that would notify the Complainant when the responsive resolutions would be available. Thus, Counsel's response is insufficient under OPRA because he failed to provide a date certain on which the City would grant or deny access to the requested records. N.J.S.A. 47:1A-5.i.

Therefore, although Ms. Hirschman responded to the Complainant's first (1<sup>st</sup>) OPRA request Item No. 2 in writing in a timely manner, said response is insufficient pursuant to Hardwick, supra, and N.J.S.A. 47:1A-5.i. because she failed to provide a specific anticipated date upon which TCCS would grant access to the responsive records. *See also Verry v. Borough of South Bound Brook (Somerset)*, GRC Complaint No. 2008-48 (Interim Order dated March 25, 2009).

**Whether Ms. Hirschman timely and sufficiently responded to the Complainant's second (2<sup>nd</sup>) OPRA request?**

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.<sup>14</sup> 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 (Morris), GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

In the instant complaint, the Complainant e-mailed Ms. Hirschman on December 20, 2010 stating that she had not received a response and the prescribed time period to respond expired. Ms. Hirschman e-mailed the Complainant on the same day stating that the Complainant should have received an e-mail on December 15, 2010. However, Ms. Hirschman subsequently certified to the GRC on July 25, 2012 that she had no record of sending the e-mail. Thus, Ms. Hirschman's failure to respond results in a "deemed" denial of access.

Therefore, Ms. Hirschman did not timely respond to the Complainant's second (2<sup>nd</sup>) OPRA request. As such, Ms. Hirschman's failure to respond in writing to said 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, supra.

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<sup>14</sup> 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.

Moreover, Ms. Hirschman responded to the Complainant's second (2<sup>nd</sup>) OPRA request stating the recording responsive to request Item No. 1 was available for inspection and that the agendas responsive to request Item No. 2 are posted to the website.

Regarding request Item No. 1, Ms. Hirschman responded via e-mail on December 20, 2010, stating that the Complainant could visit the Board offices between 9:30 a.m. and 11:30 a.m. Monday through Wednesday to listen to the audio recording of the meeting. The Complainant responded, stating that she requested a copy of the audio recording. Ms. Hirschman responded to the Complainant via e-mail on December 20, 2010 and stated that her offer to inspect the recording was consistent with OPRA. N.J.S.A. 47:1A-5.a. The Complainant informed Ms. Hirschman on December 21, 2010 via e-mail that she was willing to provide a blank CD for copy of the audio recording.

In O'Shea v. Township of Fredon (Sussex), GRC Complaint Number 2007-251 (February 2008), the complainant contended that the custodian's response to his OPRA request was insufficient because it did not address his preference for e-mailed records over paper copies via regular mail. The Council held that "[a]ccording to [the] language of N.J.S.A. 47:1A-5.g., the custodian was given two ways to comply and should have, therefore, responded acknowledging the complainant's preferences with a sufficient response for each."<sup>15</sup> The Council further held that "the Custodian's response is insufficient because she failed to specifically address the Complainant's preference for receipt of records."

Moreover, in Paff v. Borough of Sussex (Sussex), GRC Complaint Number 2008-38 (July 2008), the complainant requested that the records be provided via e-mail or facsimile, and the custodian failed to address the method of delivery in his response to the OPRA request. Despite the fact the custodian responded in writing granting access to the requested record in a timely manner, the Council determined that the "Custodian's response [was] insufficient because she failed to specifically address the Complainant's preference for receipt of the records...[t]herefore, the Custodian...violated OPRA..." *Id.*

Here, Ms. Hirschman responded to the Complainant's OPRA request and offered the Complainant to come to the Board offices and listen to the audio recording responsive to request Item No. 1 instead of providing her a copy of said recording. Ms. Hirschman did grant access to the recording, however inspection was not the Complainant's preferred method of delivery.

Therefore, Ms. Hirschman's response to the Complainant's second (2<sup>nd</sup>) OPRA request Item No. 1 is insufficient pursuant to N.J.S.A. 47:1A- 5.g., O'Shea, *supra*, and Paff, *supra*, because she failed to address the Complainant's preferred method of delivery (copy of audio recording) and instead offered for the Complainant to come to the Board

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<sup>15</sup> The Council noted that N.J.S.A. 47:1A-5.g. states that if a Custodian is "unable to comply with a request for access, then the Custodian shall indicate the specific basis" for noncompliance. In O'Shea, *supra*, the Complainant stated in his request that receipt of the requested records by e-mail was preferred over having to pay copying costs.



of Trustees' offices to listen to the audio recording. However, the Council declines to order the Custodian to provide a copy of the audio recording responsive to request Item No. 1 because the Custodian made this audio recording responsive available for pickup on December 22, 2010.

Regarding the Complainant's second (2<sup>nd</sup>) OPRA request Item No. 2, Ms. Hirschman directed the Complainant to TCCS's website. The GRC has previously determined that directing a request to an agency's website is not a proper response under OPRA.

In Kaplan v. Winslow Township Board of Education (Camden), GRC Complaint No. 2009-148, the complainant requested a Board meeting agenda dated April 1, 2009 and the budget presentation PowerPoint handout from the April 1, 2009 Board meeting. The custodian verbally responded to the complainant informing him that the records responsive were posted on the Board's website. The Council held that based on the decisions in Windish v. Mount Arlington Public Schools (Morris), GRC Complaint No. 2005-216 (August 2006)(where the complainant requested a breakdown of actual copying costs for paper copies for government records and the custodian informed the complainant that the Board's copy fees were set forth on the agency's OPRA request form) and Langford v. City of Perth Amboy (Middlesex), 2005-181 (March 2007)(where the complainant requested a copy of the rules in order to obtain a loan and the custodian responded stating that copies are available for review at the Director of Human Service's office), "the [c]ustodian should have provided the [c]omplainant access to the requested records rather than informing the [c]omplainant that the records were available on the Board of Education's website. As such, the custodian violated Windish, supra, and Langford, supra." *Id.*

The facts in the instant complaint are similar to Kaplan supra. Ms. Hirschman responded to the Complainant's second (2<sup>nd</sup>) OPRA request Item No. 2 on December 20, 2010 informing the Complainant that the responsive agendas could be found on TCCS's website. However, Ms. Hirschman failed to provide the Complainant with copies of the agendas responsive to request Item No. 2. Further, there is no evidence in the record that Ms. Hirschman ever provided the Complainant with copies of the agendas responsive to request Item No. 2.

Thus, Ms. Hirschman violated N.J.S.A. 47:1A-1 pursuant to Kaplan supra, Windish, supra, and Langford supra when she merely directed the Complainant to TCCS's website to obtain the agendas responsive to the Complainant's second (2<sup>nd</sup>) OPRA request Item No. 2 and failed to provide the Complainant with copies of same. Instead, Ms. Hirschman should have provided the Complainant access to the requested records. Further, because there is no evidence in the record that Ms. Hirschman ever provided the Complainant copies of these agendas responsive, the Custodian must provide copies of said agendas to the Complainant.

### **Whether the Complainant's first (1<sup>st</sup>) and third (3<sup>rd</sup>) OPRA requests is valid under OPRA?**

Although the Complainant's filing of her Denial of Access Complaint was not ripe regarding the third (3<sup>rd</sup>) OPRA request, the Council will still address the issue of whether the Complainant's request was valid under OPRA.

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.*

In addition, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),<sup>16</sup> 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."<sup>17</sup>

Moreover, 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

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<sup>16</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

<sup>17</sup> As stated in Bent, *supra*.

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.

Further, 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:

- Item No. 2: "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.
- Item No. 3: 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.
- Item No. 4: 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.
- Item No. 5: 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 the instant complaint, the Complainant's first (1<sup>st</sup>) OPRA request was for "1) all substitute teacher certifications held by any and all teacher's aides employed at TCCS and 2) Board of Trustees resolution approving the teacher's aides' employment as substitute teachers." The Complainant's third (3<sup>rd</sup>) OPRA request sought "all TCCS correspondences with Gina Miller and Lucria Ortiz aka Ebanks, including but not limited to reference to the Complainant's child, Board actions, OPRA requests, TCCS administration, grievances and grievance committee actions. This request also includes

all correspondences with any and all trustee members, TCCS administration and Friends of TCCS.” The Complainant’s OPRA requests are invalid because the Complainant does not specifically identify a government record sought. In response to the Complainant’s first (1<sup>st</sup>) OPRA request, the Custodian would have to look at the personnel file for every teacher aide employed with TCCS to determine whether they also hold a substitute teacher certificate and further the Custodian would have to research every Board resolution to see whether the Board approved the teacher’s aide employment as a substitute teacher. In addition, the Complainant failed to specify the type of correspondence sought (i.e. e-mails, memoranda, letters, facsimile) in her third (3<sup>rd</sup>) OPRA request.

Therefore, because the Complainant’s first (1<sup>st</sup>) and third (3<sup>rd</sup>) requests fail to identify a specific government record sought, such requests are 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, 37 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

**Whether TCCS violated N.J.S.A. 47:1A-1.1 by failing to appoint a Custodian at the time of the Complainant’s OPRA requests?**

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 defines the custodian of record as:

“... in the case of a municipality, the municipal clerk and in the case of any other public agency, the officer officially designated by formal action of that agency's director or governing body, as the case may be.” N.J.S.A. 47:1A-1.1.

Ms. Hirschman certified in the SOI that TCCS appointed the Custodian as the official Records Custodian at the January 10, 2011 Board meeting. Ms. Hirschman also certified that until January 10, 2011, TCCS had no official custodian. Although the TCCS

was without a designated custodian for an indeterminate amount of time, the evidence is also clear that Ms. Hirschman was acting as the custodian during that time period.

OPRA defines the custodian of records as “in the case of a municipality, the municipal clerk and in the case of any other public agency, the officer officially designated by formal action of that agency's director or governing body, as the case may be.” N.J.S.A. 47:1A-1.1.

In the instant complaint, Ms. Hirschman certified in the SOI that until January 10, 2011, TCCS had no official custodian at the time of the Complainant’s OPRA request. However, Ms. Hirschman assumed the responsibility of responding to the Complainant’s OPRA requests. Thus, although there was no official Custodian of Records at the time of the Complainant’s OPRA request, Ms. Hirschman assumed that role by responding to the Complainant’s OPRA requests and by completing the SOI pursuant to N.J.S.A. 47:1A-1.1.

### **Whether meeting minutes and resolutions are “immediate access” records as defined under OPRA?**

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.

In an e-mail to Ms. Hirschman dated November 16, 2010, the Complainant asserted that meeting minutes and resolutions are immediate access records pursuant to N.J.S.A. 47:1A-5.e.

When construing the meaning of a statute, the court must first consider the plain meaning of the words in the provision. Burns v. Belafsky, 166 N.J. 466, 473, 766 A.2d 1095 (2001)(citing State v. Hoffman, 149 N.J. 564, 578, 695 A.2d 236 (1997)). Unless the legislative intent instructs otherwise, the words and language at issue must be given their plain and ordinary meaning. *Ibid.* (citing Merin v. Maglaki, 126 N.J. 430, 434-35, 599 A.2d 1256 (1992)). When “... the statutory language is clear and unambiguous, and susceptible to only one interpretation, courts should apply the statute as written without resort to extrinsic interpretive aids.” State v. Hodde, 181 N.J. 375, 379 (2004)(quoting In re Passaic County Utils. Auth., 164 N.J. 270, 299 (2000)).

Here, OPRA provides that “immediate access ordinarily shall be granted ...” to certain specific types of government records. N.J.S.A. 47:1A-5.e. A review of this provision of OPRA reveals that meeting minutes and resolutions are not specifically identified as “immediate access” records. Thus, the GRC must adhere to the clear and unambiguous language of N.J.S.A. 47:1A-5.e. and recognize only those specific records identified as immediate access records.

Therefore because the language of N.J.S.A. 47:1A-5.e. is clear as to which specific records are classified as “immediate access” records (budgets, bills, vouchers, contracts, public employee salary and overtime information.), the GRC declines to determine that meeting minutes and resolutions are also “immediate access” records.

**Whether Ms. Hirschman’s actions rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances?**

The Council defers analysis of whether Ms. Hirschman knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

**Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. Because the Complainant’s cause of action for her third (3<sup>rd</sup>) OPRA request was not ripe at the time of the filing of this Denial of Access Complaint; to wit, the Custodian had not denied access to any records responsive to the OPRA request and the prescribed time frame for the Custodian to respond had not expired, this portion of the instant complaint is materially defective and therefore should be dismissed. *See Sallie v. NJ Department of Banking and Insurance*, GRC Complaint No. 2007-226 (April 2009).
2. Although Ms. Hirschman responded to the Complainant’s first (1<sup>st</sup>) OPRA request Item No. 2 in writing in a timely manner, said response is insufficient pursuant to *Hardwick v. NJ Department of Transportation*, GRC Complaint No. 2007-164 (February 2008) and N.J.S.A. 47:1A-5.i. because she failed to provide a specific anticipated date upon which TCCS would grant access to the responsive records. *See also Verry v. Borough of South Bound Brook (Somerset)*, GRC Complaint No. 2008-48 (Interim Order dated March 25, 2009).
3. Ms. Hirschman did not timely respond to the Complainant’s second (2<sup>nd</sup>) OPRA request. As such, Ms. Hirschman’s failure to respond in writing to said 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 (Morris)*, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
4. Ms. Hirschman’s response to the Complainant’s second (2<sup>nd</sup>) OPRA request Item No. 1 is insufficient pursuant to N.J.S.A. 47:1A- 5.g., *O’Shea v. Township of Fredon (Sussex)*, GRC Complaint Number 2007-251 (February 2008), and *Paff v. Borough of Sussex (Sussex)*, GRC Complaint Number 2008-38 (July 2008), because she failed to address the Complainant’s preferred method of delivery (copy of audio recording) and instead offered for

the Complainant to come to the Board of Trustees' offices to listen to the audio recording. However, the Council declines to order the Custodian to provide a copy of the audio recording responsive to request Item No. 1 because the Custodian made this audio recording responsive available for pickup on December 22, 2010.

5. Ms. Hirschman violated N.J.S.A. 47:1A-1 pursuant to Kaplan v. Winslow Township Board of Education (Camden), GRC Complaint No. 2009-148. *See* Windish v. Mount Arlington Public Schools (Morris), GRC Complaint No. 2005-216 (August 2006) and Langford v. City of Perth Amboy (Middlesex), 2005-181 (March 2007) when she merely directed the Complainant to TCCS's website to obtain the agendas responsive to the Complainant's second (2<sup>nd</sup>) OPRA request Item No. 2 and failed to provide the Complainant with copies of same. Instead, Ms. Hirschman should have provided the Complainant access to the requested records. Further, because there is no evidence in the record that Ms. Hirschman ever provided the Complainant copies of these agendas responsive, the Custodian must provide copies of said agendas to the Complainant.
6. **The Custodian shall comply with Item No. 5 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>18</sup> to the Executive Director.<sup>19</sup>**
7. Because the Complainant's first (1<sup>st</sup>) and third (3<sup>rd</sup>) requests fail to identify a specific government record sought, such requests are 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, 37 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
8. Although there was no official Custodian of Records at the time of the Complainant's OPRA request, Ms. Hirschman assumed that role by responding to the Complainant's OPRA requests and by completing the Statement of Information pursuant to N.J.S.A. 47:1A-1.1.

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<sup>18</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

<sup>19</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

9. Because the language of N.J.S.A. 47:1A-5.e. is clear as to which specific records are classified as “immediate access” records (budgets, bills, vouchers, contracts, public employee salary and overtime information.), the GRC declines to determine that meeting minutes and resolutions are also “immediate access” records.
10. The Council defers analysis of whether Ms. Hirschman knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

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Case Manager

Approved By: Karyn Gordon, Esq.  
Acting Executive Director

August 21, 2012