



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

July 31, 2012 Government Records Council Meeting

Donna Moon
Complainant

Complaint No. 2011-59

v.

City of Trenton Police Department (Mercer)
Custodian of Record

At the July 31, 2012 public meeting, the Government Records Council (“Council”) considered the July 24, 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 respond in writing to the 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).
2. The Complainant’s requests for items numbered 1 through 4 are invalid under OPRA because they fail to identify the specific government records sought. Moreover, although the Custodian disclosed the records she determined were responsive to the Complainant’s request for items numbered 1 through 4, the Custodian had no legal duty to do so because OPRA does not require custodians to research files to discern which records may be responsive to a request or to conduct research to locate records potentially responsive to the Complainant’s request pursuant to the Superior Court’s decisions in 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), and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007).
3. Because the Custodian certified that she disclosed a record to the Complainant which contained a resolution that stated that no site plan for Risoldi’s Auto Towing exists on file, and because there is no credible evidence in the record to refute the Custodian’s certification, the Custodian did not unlawfully deny access to request item number 5 pursuant to N.J.S.A. 47:1A-6 and Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).



4. Although the Custodian failed to respond in writing to the Complainant's OPRA request within the statutorily mandated period which resulted in a "deemed" denial of the Complainant's OPRA request, the Custodian did disclose to the Complainant all of the records the Custodian determined were responsive to the Complainant's request despite the fact she had no legal duty under OPRA to do so. Moreover, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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

Final Decision Rendered by the
Government Records Council
On The 31st Day of July, 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 6, 2012

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
July 31, 2012 Council Meeting**

**Donna Moon¹
Complainant**

GRC Complaint No. 2011-59

v.

**City of Trenton Police Department (Mercer)²
Custodian of Records**

Records Relevant to Complaint:

1. A list of companies that applied for 2010-2011 towing contracts for the City of Trenton Police Department.
2. A list of companies that were approved for towing.
3. A list of companies that were denied for towing.
4. A list of information regarding how the towing companies were notified of approvals and denials.
5. Reports for the 2010-2011 site plan for Risoldi's Auto Towing, 25 Muirhead Avenue, Trenton, NJ.

Request Made: February 4, 2011³

Response Made: February 16, 2011

Custodian: Leona Baylor, Clerk⁴

GRC Complaint Filed: March 3, 2011⁵

Background

February 4, 2011

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. The Complainant indicates that the preferred method of delivery is via pick up at the Custodian's office.

February 16, 2011

Custodian's response to the OPRA request. Shirley Lopreato, the City of Trenton License Inspector, responds to the Complainant verbally via a telephone call in reply to

¹ No legal representation listed on record.

² Represented by Marc McKithen, Esq. (Trenton, NJ).

³ The OPRA request is dated February 4, 2011; however, the Custodian and the Complainant both agree that the request was personally delivered to the Custodian on February 7, 2011.

⁴ Shirley Lopreato is listed on the Statement of Information as the Custodian; however, Leona Baylor is the City Clerk and signed the Statement of Information averring that she is the Custodian.

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

the Complainant's OPRA request on the seventh (7th) business day following receipt of such request.⁶ Ms. Lopreato informs the Complainant that the Custodian will need a seven (7) business day extension of time to fulfill the Complainant's request.

March 3, 2011

Denial of Access Complaint filed with the Government Records Council ("GRC") attaching the Complainant's OPRA request dated February 4, 2011.

The Complainant states that she personally delivered her OPRA request to the Custodian at the Custodian's office on February 7, 2011. The Complainant further states that she received a telephone call from Ms. Lopreato on February 16, 2011. The Complainant states that Ms. Lopreato informed her that the Custodian would need a seven (7) business day extension of time to fulfill the Complainant's request. The Complainant states that she approved the extension of time and asked for a confirmation e-mail, which the Complainant states was sent to her and is attached to her complaint.⁷

The Complainant states that she went to the Custodian's office to pick up the records on March 1, 2011; however, the Custodian informed the Complainant that no records were available for the Complainant.

The Complainant does not agree to mediate this complaint.

April 6, 2011

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

April 15, 2011

Custodian's SOI attaching the Complainant's OPRA request dated February 4, 2011.⁸

The Custodian certifies that her search for the requested records involved sending multiple e-mails and phone calls to the Police Department which had control over the requested records. The Custodian also certifies that the last date upon which records that may have been responsive to the request were destroyed in accordance with the Records Destruction Schedule established and approved by Records Management Services is: six (6) years after the term of the contract period for awarded contracts and one (1) year after submission for failed bids pursuant to retention schedule M-100000 and one (1) year after the case closes for police investigative reports pursuant to retention schedule M-900000. The Custodian also certifies that resolutions must be retained permanently. The Custodian further certifies that none of the requested records should have been destroyed because the earliest destruction date would not be until the end of 2011.

⁶ The Custodian certifies in the Statement of Information that she received the Complainant's OPRA request on April 7, 2011. Moreover, the Complainant states in the Denial of Access Complaint that she personally delivered the OPRA request to the Custodian on April 7, 2011.

⁷ No e-mail requesting an extension of time for the Custodian to respond to the Complainant's request was attached to the complaint.

⁸ The Custodian attached several other documents to the SOI; however, the documents were inter-agency e-mails and correspondence related to GRC Complainant No. 2011-43 and therefore are not relevant to the instant complaint.

The Custodian certifies that she received the Complainant's OPRA request on February 7, 2011, and that she responded to the request on March 10, 2011 by forwarding to the Complainant a one (1) page memo from the Police Department providing names of towing companies that applied during the relevant time for City towing contracts, the names of the towing companies that were approved or denied, and the names of the towing companies that were awarded contracts. The Custodian also certifies that she disclosed to the Complainant a four (4) page document from the Zoning Department which is comprised of a one (1) page memo and a three (3) page resolution which states that no site plan for Risoldi's Auto Towing exists on file. The Custodian certifies that by disclosing this material she has disclosed all of the records responsive to items numbered 1 through 5 of the Complainant's request and that she disclosed them to the Complainant in their entirety.

May 16, 2012

Telephone call from the GRC to the Complainant. The GRC's call to the Complainant was answered by Dennis Moon who said he was thoroughly familiar with the complaint filed by Ms. Moon and wanted to know what the GRC wanted from Donna Moon. The GRC informed Mr. Moon that the Custodian certified that all of the records have been disclosed to the Complainant and the GRC wanted to obtain a confirmation from the Complainant that all of the records responsive to her request were disclosed to her satisfaction. Mr. Moon said that all of the records were disclosed some time ago and he wanted to withdraw the complaint. The GRC informed Mr. Moon that the Complainant would have to withdraw the complaint in writing to the GRC. The GRC advised Mr. Moon that the GRC would send an e-mail to the Complainant and that the Complainant could just reply to the e-mail withdrawing the complaint. Mr. Moon told the GRC that such an e-mail would be fine.

May 16, 2012

E-mail from the GRC to the Complainant. The GRC confirms its earlier telephone conversation with Mr. Moon and asks the Complainant to confirm withdrawal of the instant complaint.⁹

May 23, 2012

E-mail from the GRC to the Complainant. The GRC tells the Complainant that the GRC never received a reply from her to its e-mail dated May 16, 2012. The GRC asks the Complainant to either withdraw the complaint or to certify as to which records have not yet been received from the Custodian if not all of the records have been disclosed to the Complainant.¹⁰

May 30, 2012

E-mail from the GRC to the Complainant. The GRC repeats its request made to the Complainant in the GRC's e-mail dated May 23, 2012. The GRC informs the Complainant that the complaint is being held in abeyance pending her reply to the GRC's

⁹ The Complainant does not respond to the GRC's correspondence.

¹⁰ The Complainant does not respond to the GRC's correspondence.

May 23, 2012 e-mail. The GRC tells the Complainant that if the Complainant does not respond to the GRC within three (3) business days, the GRC will rely solely upon the Custodian's representations regarding disclosure of the requested records.¹¹

Analysis

Whether the Custodian properly responded to the Complainant's 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* ...” (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 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.¹² 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.,

¹¹ The Complainant does not respond to the GRC's correspondence.

¹² 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.

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 instant complaint, it is undisputed between the parties that the Complainant delivered her OPRA request to the Custodian on February 7, 2011. The evidence of record reveals that Ms. Lopreato, on behalf of the Custodian, made a telephone call to the Complainant on February 16, 2012, the seventh (7th) business day following receipt of the request, informing the Complainant that the Custodian would need a seven (7) business day extension of time to fulfill the Complainant's request. The Complainant stated that she received an e-mail from Ms. Lopreato confirming the telephone conversation; however, no such e-mail could be produced by either the Custodian or the Complainant. Further, the Custodian certified that she did not respond to the Complainant until she disclosed the records to the Complainant on March 10, 2011. As such, there is no evidence that the Custodian issued a written response confirming the verbal response to the Complainant.

Accordingly, the Custodian's failure to respond in writing to the 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, supra.

Whether the Custodian unlawfully denied access to the requested records?

OPRA provides that:

"...government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions*..." (Emphasis added.) N.J.S.A. 47:1A-1.

Additionally, OPRA defines a government record as:

"... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on file ... or that has been received* in the course of his or its official business ..." (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA 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.

Request item number 1 - A list of companies that applied for 2010-2011 towing contracts for the City of Trenton Police Department.

Request item number 2- A list of companies that were approved for towing.

Request item number 3 - A list of companies that were denied for towing.

Request item number 4 - A list of information regarding how the towing companies were notified of approvals and denials.

Although the Custodian disclosed records responsive to request items numbered 1 through 4, she had no obligation to do so because these were requests for information and not requests for government records.

The New Jersey Superior Court has held that “[w]hile OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records ‘readily accessible for inspection, copying, or examination.’* N.J.S.A. 47:1A-1.” (Emphasis added.) MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). 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),¹³ 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.”¹⁴

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 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:

¹³ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

¹⁴ As stated in Bent, *supra*.

2. 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.
3. 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.
4. 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.
5. 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 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.

Accordingly, the Complainant’s requests for items numbered 1 through 4 are invalid under OPRA because they fail to identify the specific government records sought. Moreover, although the Custodian disclosed the records she determined were responsive to the Complainant’s request for items numbered 1 through 4, the Custodian had no legal duty to do so because OPRA does not require custodians to research files to discern which records may be responsive to a request or to conduct research to locate records potentially responsive to the Complainant’s request pursuant to the Superior Court’s decisions in MAG, *supra*, Bent, *supra*, and New Jersey Builders, *supra*.

Request item number 5 - Reports for the 2010-2011 site plan for Risoldi’s Auto Towing.

The Custodian certified that she disclosed to the Complainant a (4) page record from the Zoning Department which contains a resolution that stated that no site plan for Risoldi’s Auto Towing exists on file. Further, the Complainant provided no evidence to refute the Custodian’s certification.

In Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the complainant sought telephone billing records showing a Donna Moon v. City of Trenton Police Department (Mercer), 2011-59 – Findings and Recommendations of the Executive Director

call made to him from the New Jersey Department of Education. The custodian responded stating that there was no record of any telephone calls made to the complainant. The custodian subsequently certified that no records responsive to the complainant's request existed and the complainant did not provide any evidence to refute the custodian's certification. The GRC determined that although the custodian failed to respond to the OPRA request in a timely manner, the custodian did not unlawfully deny access to the requested records because the custodian certified that no records responsive to the request existed.

Therefore, because the Custodian certified that she disclosed a record to the Complainant which contained a resolution that stated that no site plan for Risoldi's Auto Towing exists on file, and because there is no credible evidence in the record to refute the Custodian's certification, the Custodian did not unlawfully deny access to request item number 5 pursuant to N.J.S.A. 47:1A-6 and Pusterhofer, *supra*.

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).

In the matter before the Council, although the Custodian failed to respond in writing to the Complainant's OPRA request within the statutorily mandated period, which resulted in a "deemed" denial of the Complainant's OPRA request, the Custodian did disclose to the Complainant all of the records the Custodian determined were responsive to the Complainant's request despite the fact she had no legal duty under OPRA to do so. Moreover, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian's failure to respond in writing to the 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).
2. The Complainant's requests for items numbered 1 through 4 are invalid under OPRA because they fail to identify the specific government records sought. Moreover, although the Custodian disclosed the records she determined were responsive to the Complainant's request for items numbered 1 through 4, the Custodian had no legal duty to do so because OPRA does not require custodians to research files to discern which records may be responsive to a request or to conduct research to locate records potentially responsive to the Complainant's request pursuant to the Superior Court's decisions in 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), and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007).
3. Because the Custodian certified that she disclosed a record to the Complainant which contained a resolution that stated that no site plan for Risoldi's Auto Towing exists on file, and because there is no credible evidence in the record to refute the Custodian's certification, the Custodian did not unlawfully deny access to request item number 5 pursuant to N.J.S.A. 47:1A-6 and Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).
4. Although the Custodian failed to respond in writing to the Complainant's OPRA request within the statutorily mandated period which resulted in a "deemed" denial of the Complainant's OPRA request, the Custodian did

disclose to the Complainant all of the records the Custodian determined were responsive to the Complainant's request despite the fact she had no legal duty under OPRA to do so. Moreover, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: John E. Stewart, Esq.

Approved By: Karyn Gordon, Esq.
Acting Executive Director

July 24, 2012