



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

August 28, 2012 Government Records Council Meeting

Golda D. Harris
Complainant

Complaint No. 2011-65

v.

New Jersey Department of Corrections
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. The Custodian’s failure to immediately respond in writing to the Complainant’s OPRA request for immediate access records, 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). *See also* Campbell v. Township of Downe (Cumberland), GRC Complaint No. 2009-219 (Interim Order dated January 25, 2011). Further, the Custodian’s failure to provide immediate access to copies of the requested contracts violated N.J.S.A. 47:1A-5.e.
2. The Custodian lawfully declined the Complainant’s payment for the responsive records (Item Nos. 1-4) as the Complainant was a resident inmate at the time of the request and submitted a payment that did not originate from her inmate account. Such a denial of access is lawful consistent with the procedures prescribed in NJDOC Internal Management Procedure FMB.ACC.017 - OPRA Billing Procedures and the authority granted by N.J.S.A. 47:1A-9.b., N.J.S.A. 30:1B-6.e. and N.J.S.A. 30:1B-6.g.
3. Because the Custodian has certified that no records responsive to Item Nos. 5-8 of the Complainant’s OPRA request exist and because there is no competent, credible evidence in the record sufficient to refute the Custodian’s certification, pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the Custodian has not unlawfully denied the Complainant access to Item Nos. 5-8 of the Complainant’s request. N.J.S.A. 47:1A-6.



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 28th 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 30, 2012

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Golda D. Harris¹
Complainant**

GRC Complaint No. 2011-65

v.

**New Jersey Department of Corrections²
Custodian of Records**

Records Relevant to Complaint: Copies of the following:

1. General classified budgets for the New Jersey Department of Corrections (“NJDOC”), Edna Mahan Correctional Facility for Women and the New Jersey State Prison.
2. Line item amount with spending per inmate type (i.e. general, special needs, handicap).
3. How much of the budget is allocated for special needs and handicap I/M per inmate?
4. What is the total operating budget? Indicate position and salary (i.e. Warden, Director, Officer, Nurse, etc.)
5. How many claims were filed against the prisons/number of injuries?
6. What is the number of settlements with amounts, assessed liability paid out during the past five (5) years?
7. Name and address of contacts for claims department for the NJDOC, Edna Mahan Correctional Facility and New Jersey State Prison.
8. Contact information for legal counsel for the NJDOC, Edna Mahan Correctional Facility and New Jersey State Prison.

Request Made: November 8, 2009

Response Made: November 24, 2009

Custodian: John Falvey³

GRC Complaint Filed: March 10, 2011⁴

¹ No legal representation listed on record.

² No legal representation listed on record.

³ The Custodian at the time of the Complainant’s OPRA request was Michelle Hammel. The Custodian at the time of the Statement of Information was Deirdre Fedkenheuer.

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

Background

September 30, 2009

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 U.S. Mail. The Complainant states that she is not seeking victim's records. The Complainant also requests that the Custodian waive the cost of copying fees and delivery of such records because she is indigent.

November 24, 2009

Custodian's response to the OPRA request. The Custodian responds in writing via letter to the Complainant's OPRA request on the sixth (6th) business day following receipt of such request.⁵ The Custodian requests an additional seven (7) business days to respond to the Complainant's OPRA request. The Custodian states the Complainant will be informed of the copying fees applicable to any releasable responsive records.

November 29, 2009

Letter from the Complainant to the Custodian. The Complainant states that she is in receipt of the Custodian's letter dated November 24, 2009. The Complainant asks the Custodian if her request for waiver of the copying fees will be granted due to her indigent status.

December 4, 2009

Letter from the Custodian to the Complainant. The Custodian states that there are thirty-two (32) pages responsive to the Complainant's OPRA request Item No. 1 and No. 2. The Custodian also states that request Items No. 3 and No. 4 are requests for information and not for specific records, but this information might be found in the records responsive to request Item No. 1 and No. 2. The Custodian further states that request Items No. 5 through No. 8 are overly broad and do not adequately identify records sought. The Custodian additionally states that OPRA only requires a response to a request for specific records, not for information, and it does not require the creation of any record. The Custodian states that pursuant to MAG Entertainment v. Division of Alcohol Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), a request is invalid where it requires a custodian to conduct research and correlate data from various records.

The Custodian states that the Complainant has incurred fees of \$15.50 for the records responsive to request Item No. 1 and No. 2. The Custodian also states that the Complainant must complete the enclosed OPRA Records Request Payment Notification and Authorization Form and forward it to the New Jersey State Prison Business Office. The Custodian further states that upon submission of the form to the Business Office, the copy fee will be deducted from the Complainant's inmate account and once the Custodian is notified of the Complainant's payment, the records will be provided. The Custodian additionally states that N.J.S.A. 47:1A-1 provides cost assessments for the reproduction of releasable records and does not require or permit fee waivers for indigent requestors.

⁵ The Custodian certifies in the SOI that she received the Complainant's OPRA request on November 16, 2009.

December 13, 2009

Letter from the Complainant to the Custodian. The Complainant states that she is in receipt of the Custodian's letter dated December 4, 2009. The Complainant also states that she has asked her sister to send a money order in the amount of \$15.50 to cover the copying fees of the requested records. The Complainant further states that she has no money in her account.

January 13, 2010

Letter from the Custodian to the Complainant. The Custodian states that the Complainant's OPRA request remains open because the Custodian is still awaiting payment for the copying fees. The Custodian also states that if no response is received within thirty (30) days from January 13, 2010, the Complainant's OPRA request will be closed and no further action will be taken.

January 19, 2010

Letter from the Complainant to the Custodian. The Complainant states that she is in receipt of the Custodian's letter dated January 13, 2010. The Complainant also states that her sister will be paying for the requested records.

May 10, 2011

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

- Complainant's OPRA request dated November 8, 2009
- Letter from the Custodian to the Complainant dated November 24, 2009
- Letter from the Complainant to the Custodian dated November 29, 2009
- Letter from the Custodian to the Complainant dated December 4, 2009
- Letter from the Complainant to the Custodian dated December 13, 2009
- Letter from the Custodian to the Complainant dated January 13, 2010
- Letter from the Complainant to the Custodian dated January 19, 2010⁶

The Complainant states that she was denied access to the requested records because her sister paid for the requested records, and she was informed that the funds for the records must come from the accounts of the inmate who requested records. The Complainant asserts she was informed that her inmate account had insufficient funds to pay for the requested records.

The Complainant states that the basis of this denial is a conflict of interest. The Complainant contends that the NJDOC's staff has failed to be impartial. The Complainant argues that there is no statute that precludes the NJDOC from accepting her sister's money order on behalf of the Complainant.

The Complainant agrees to mediate this complaint.

⁶ The Complainant submitted additional documentation that is not relevant to the adjudication of this complaint.

March 10, 2011

Offer of Mediation sent to the Custodian.

March 11, 2011

The Custodian declines to mediate this complaint.

March 15, 2011

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

March 24, 2011

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated November 8, 2009
- Letter from the Custodian to the Complainant dated November 24, 2009
- Letter from the Complainant to the Custodian dated November 29, 2009
- Letter from the Custodian to the Complainant dated December 4, 2009
- Letter from the Complainant to the Custodian dated December 13, 2009
- Letter from the Custodian to the Complainant dated January 13, 2010
- Letter from the Complainant to the Custodian dated January 19, 2010
- Letter from the Custodian to the Complainant dated January 21, 2010
- A copy of the NJDOC Office of Financial Management OPRA Billing Procedures Policy⁷

The Custodian certifies that a search for records responsive to request Item Nos. 1-4 yielded 32 pages of budgetary documentation that was provided by the NJDOC Division of Administration. The Custodian certifies that she is not aware of any applicable retention schedule for the requested records. The Custodian further certifies that the records responsive to request Item Nos. 1-4 were not provided to the Complainant because the Complainant failed to provide the \$15.50 payment for the requested items. The Custodian certifies that she received the Complainant’s request on November 24, 2009 and requested a ten (10) business day extension to search for records responsive to the request.⁸ The Custodian certifies that she again responded to the Complainant on December 4, 2009 and provided her with a NJDOC OPRA Records Request Payment Notification and Authorization form that billed the Complainant \$15.50 for the reproduction of the responsive records (Item Nos. 1-4).

In addition, the Custodian certifies that no records exist that are responsive to Item Nos. 5-8 of the Complainant’s request. The Custodian contends that Item Nos. 5-8 were denied because they were requests for information and not identifiable records. The Custodian further certifies that the Complainant was provided with the addresses for both the NJDOC Office of External Affairs regarding tort claims and the address of the NJDOC’s legal counsel.

⁷ The Custodian submitted additional documentation that is not relevant to the adjudication of this complaint.

⁸ The November 24, 2009 letter from the Custodian to the Complainant actually requests a seven (7) day extension and not a ten (10) day extension as the Custodian certifies.

The Custodian certifies that on December 13, 2009, the NJDOC received correspondence from the Complainant that stated that a family member was going to pay for the requested records on her behalf. The Custodian further certifies that on January 13, 2010, the Custodian forwarded the Complainant a notice that thirty (30) days had passed and payment for the requested records was still outstanding. The Custodian certifies that the Complainant informed the Custodian on January 19, 2010 that a family member would make payment for the requested records. The Custodian certifies that on January 21, 2009, a money order (#14-023572043) made payable to Ms. Michelle Warner Hammel in the amount of \$15.00 was received from the Complainant's sister.

The Custodian certifies that on January 21, 2010, the Custodian informed the Complainant that the payment by the relative was received, but that the NJDOC could not accept payment by a third (3rd) party in lieu of insufficient funds available in her Inmate Trust Account. The Custodian certifies that New Jersey State Prison OPRA Liaison, Frank Bruno, returned the money order and correspondence to the Complainant's sister. The Custodian certifies that on February 16, 2010, the Complainant's relative again forwarded a money order, but in the amount of \$15.50. The Custodian certifies that NJDOC also rejected this money order as an unacceptable third (3rd) party payment in lieu of the Complainant's insufficient Inmate Trust Account funds.

The Custodian maintains that the Complainant's assertion that she is indigent is immaterial as the departmental OPRA billing procedures (#FMB.ACC.017) for resident inmates requires that an inmate has sufficient funds in her account in order for proper payment of the requested record to be processed.

August 15, 2012

E-mail from the Custodian to the GRC. The Custodian states that NJSA 30:1B-6 outlines the NJDOC Commissioner's powers and duties. The Custodian argues that N.J.S.A. 30:1B-6.e and N.J.S.A. 30:1B-6.g give the NJDOC the authority to issue Policy FMB.ACC.017 that controls OPRA Billing Procedures for resident inmates.

Analysis

Whether the Custodian unlawfully denied access to the requested records?

OPRA provides that:

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

OPRA also provides that:

“[i]f the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor. The custodian shall sign and date the

form and provide the requestor with a copy thereof ...” N.J.S.A. 47:1A-5.g.

Further, OPRA provides that:

“[u]nless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access ... or deny a request for access ... as soon as possible, but not later than seven business days after receiving the request ... In the event a custodian fails to respond within seven business days after receiving a request, the failure to respond shall be deemed a denial of the request ...” (Emphasis added.) N.J.S.A. 47:1A-5.i.

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5.i. As also prescribed under N.J.S.A. 47:1A-5.i., a custodian’s failure to respond within the required seven (7) business days results in a “deemed” denial. Further, a custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5.g.⁹ 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 Herron v. Township of Montclair, GRC Complaint No. 2006-178 (February 2007), the GRC held that “immediate access language of OPRA (N.J.S.A. 47:1A-5.e.) suggests that the Custodian was still obligated to immediately notify the Complainant...” Inasmuch as OPRA requires a custodian to respond within a statutorily required time frame, when immediate access records are requested, a custodian must respond to the request for those records immediately, granting or denying access, requesting additional time to respond or requesting clarification of the request.

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

⁹ 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.

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

In Campbell v. Township of Downe (Cumberland), GRC Complaint No. 2009-219 (Interim Order dated January 25, 2011), the complainant requested, among other records, immediate access records. The GRC determined that immediate access records required an immediate response in writing:

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

The Council held that the Custodian’s response “... [resulted] in a ‘deemed’ denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley, supra, ... [and] violated N.J.S.A. 47:1A-5.e.” *Id.* at pg. 13.

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

In the instant matter, Item Nos. 1-4 of the Complainant’s request consists of requests for budgetary information. Accordingly, the requested records concerning budgetary information are “immediate access” records pursuant to N.J.S.A. 47:1A-5.e. (“Immediate access ordinarily shall be granted to ... budgets, bills....”). These request items therefore require an immediate response pursuant to N.J.S.A. 47:1A-5.e. The Custodian received the OPRA request in this case on November 16, 2009. However, the Custodian failed to provide an immediate response to the request, as the Custodian did not provide a written response until November 24, 2009, six (6) business days following the receipt of said request.

Thus, the Custodian’s failure to immediately respond in writing to the Complainant’s OPRA request for immediate access records, 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). *See also* Campbell v. Township of Downe (Cumberland), GRC Complaint No. 2009-219 (Interim Order dated January 25, 2011). Further, the Custodian’s failure to provide immediate access to copies of the requested contracts violated N.J.S.A. 47:1A-5.e.

Whether the Custodian unlawfully denied the Complainant 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.

Moreover, OPRA provides that:

“The provisions of this act, P.L. 2001, c. 404 (C. 47:1A-5 et al.), shall not abrogate or erode any executive or legislative privilege or grant of confidentiality heretofore established or recognized by the Constitution of this State, statute, court rule or judicial case law, which privilege or grant of confidentiality may duly be claimed to restrict public access to a public record or government record.” N.J.S.A. 47:1A-9.b.

New Jersey law provides that the NJDOC Commissioner, as administrator and chief executive officer of the department, shall:

“Formulate, adopt, issue and promulgate, in the name of the department such rules and regulations for the efficient conduct of the work and general administration of the department, the institutions or non-institutional agencies within its jurisdiction, its officers and employees as may be authorized by law.” N.J.S.A. 30:1B-6.e.

Furthermore, applicable New Jersey law states that the NJDOC Commissioner shall,

“Determine all matters of policy and regulate the administration of the institutions or non-institutional agencies within his jurisdiction, correct and adjust the same so that each shall function as an integral part of a general system. The rules, regulations, orders and directions promulgated by the commissioner for this purpose shall be accepted and enforced by the executive having charge of any institution or group of institutions or non-institutional agencies or any phase of the work within the jurisdiction of the department.” N.J.S.A. 30:1B-6.g.

Accordingly, the NJDOC Commissioner has used this authority to issue NJDOC Internal Management Procedure FMB.ACC.017, OPRA Billing Procedures for resident inmates that requires that an “*inmate must have sufficient funds in his/her account to process the form for payment.* If the inmate does not have sufficient funds in his/her account, the request will be denied and returned to the inmate through the institution’s OPRA liaison.” (emphasis added).

However, 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.

In the instant complaint, the Complainant argues that the Custodian has unlawfully denied her access to the requested records because she failed to provide payment via the required method. The Complainant maintains that her relative provided payment for the requested records on her behalf. However, the Custodian certifies that this payment method is invalid because NJDOC’s Internal Management Procedure FMB.ACC.017 requires that resident inmates have sufficient funds in their inmate account to process payments. The Custodian certifies that the inmate failed to complete an OPRA Records Payment Notification and Authorization Form in the amount of \$15.50 for request Item Nos. 1-4 and had insufficient funds in her inmate account at the time her request was to be fulfilled.

Consistent with the Complainant’s assertions in her Denial of Access Complaint and the Custodian’s certified statements in the Statement of Information, the evidence in the record confirms the Complainant’s request was denied due to insufficient funds in the Complainant’s inmate account to pay for responsive records. However, the NJDOC’s policy requiring payment for government records to originate from an inmate’s account is lawful pursuant to N.J.S.A. 47:1A-9.b., N.J.S.A. 30:1B-6.e. and N.J.S.A. 30:1B-6.g.

Therefore, the Custodian lawfully declined the Complainant’s payment for the responsive records (Item Nos. 1-4) as the Complainant was a resident inmate at the time of the request and submitted a payment that did not originate from her inmate account. Such a denial of access is lawful consistent with the procedures prescribed in NJDOC

Internal Management Procedure FMB.ACC.017 - OPRA Billing Procedures and the authority granted by N.J.S.A. 47:1A-9.b., N.J.S.A. 30:1B-6.e. and N.J.S.A. 30:1B-6.g.

In regards to Item Nos. 5-8 of the Complainant's request, the Custodian certifies in the Statement of Information that the NJDOC does not possess records that are responsive to this portion of the Complainant's request. The Complainant submitted no evidence to refute the Custodian's certification in this regard.

The Council has consistently held that no denial of access occurs when a custodian has demonstrated that no records responsive to a complainant's request exist. In Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the complainant sought telephone billing records showing a call made to him from the New Jersey Department of Education. The custodian responded stating that there was no record of any telephone calls made to the complainant. The custodian subsequently certified that no records responsive to the complainant's request existed and the complainant submitted no evidence to refute said certification. The GRC held the custodian did not unlawfully deny access to the requested records because the custodian certified that no records responsive to the request existed.

Accordingly, because the Custodian has certified that no records responsive to Item Nos. 5-8 of the Complainant's OPRA request exist and because there is no competent, credible evidence in the record sufficient to refute the Custodian's certification, pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the Custodian has not unlawfully denied the Complainant access to Item Nos. 5-8 of the Complainant's request. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian's failure to immediately respond in writing to the Complainant's OPRA request for immediate access records, 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). *See also* Campbell v. Township of Downe (Cumberland), GRC Complaint No. 2009-219 (Interim Order dated January 25, 2011). Further, the Custodian's failure to provide immediate access to copies of the requested contracts violated N.J.S.A. 47:1A-5.e.
2. The Custodian lawfully declined the Complainant's payment for the responsive records (Item Nos. 1-4) as the Complainant was a resident inmate at the time of the request and submitted a payment that did not originate from her inmate account. Such a denial of access is lawful consistent with the procedures prescribed in NJDOC Internal

Management Procedure FMB.ACC.017 - OPRA Billing Procedures and the authority granted by N.J.S.A. 47:1A-9.b., N.J.S.A. 30:1B-6.e. and N.J.S.A. 30:1B-6.g.

3. Because the Custodian has certified that no records responsive to Item Nos. 5-8 of the Complainant's OPRA request exist and because there is no competent, credible evidence in the record sufficient to refute the Custodian's certification, pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the Custodian has not unlawfully denied the Complainant access to Item Nos. 5-8 of the Complainant's request. N.J.S.A. 47:1A-6.

Prepared By: Darryl C. Rhone
Case Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

August 21, 2012