



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

June 25, 2013 Government Records Council Meeting

Donna A. Fleming
Complainant

Complaint No. 2012-222

v.

Town of Phillipsburg (Warren)
Custodian of Record

At the June 25, 2013 public meeting, the Government Records Council (“Council”) considered the June 18, 2013 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. Custodian Kleiner violated N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), resulting in a “deemed” denial of the Complainant’s OPRA request because she failed to provide the Complainant with a written response either granting access, denying access, seeking clarification, or requesting an additional extension of time within the extended time period. *See also* Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
2. Notwithstanding the Custodian’s “deemed denial,” the Custodian has not unlawfully denied access to the records the Complainant asserts were withheld because the Complainant’s OPRA request is overly broad and invalid. *See* MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005), and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007).
3. Although there was a “deemed denial” of the Complainant’s OPRA request, the Custodian did not unlawfully deny access to the requested records because the Complainant’s request was overly broad and invalid. As such, the Custodian’s actions did 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 25th Day of June, 2013

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

Steven Ritardi, Esq., Acting Chair
Government Records Council

Decision Distribution Date: June 27, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 25, 2013 Council Meeting**

**Donna A. Fleming¹
Complainant**

GRC Complaint No. 2012-222

v.

**Town of Phillipsburg (Warren)²
Custodian of Records**

Records Relevant to Complaint:

Request dated April 20, 2012³

1. Inspection of any and all correspondence and documents between the Town of Phillipsburg, its officials, employees, or agents sent to or received from Ingersoll-Rand, its officials, employees or agents with regard to the Ingersoll property for the past five (5) years.
2. Inspection of any documents or correspondence relating to the Ingersoll property for the past five (5) years from any other source.

Request dated May 2, 2012

Inspection of any and all documents, including but not limited to, letters, memoranda, applications, resolutions, ordinances, financial records, e-mails, file notes, photographs, inspection reports, recordings (audio, visual or otherwise), etc., between the Town of Phillipsburg, its officials, employees, or agents without limitation and Ingersoll-Rand and any other owners of stated property, their officials, employees, or agents on file concerning the Ingersoll-Rand property, Block 3301, Lots 2, 4, 4.022, 5 and 6 and Block 3201, Lots 7.02 and 7.03 for the past five (5) years from January 1, 2007 to May 2, 2012. Officials, employees or agents are meant to include the Mayor, current and former Council members, Town Counsel, Town Engineer, Administrator, Zoning Officer, Public Works Director, contractors and any other necessarily related agents of the town.

Request Made: April 20, 2012 and May 2, 2012

Response Made: April 25, 2012 and May 10, 2012

GRC Complaint Filed: July 26, 2012⁴

¹ No legal representation listed on record.

² Acting Clerk Victoria L. Kleiner replaced Clerk Michele D. Broubalow as the Custodian of Records when Ms. Broubalow died on May 15, 2012. Represented by Richard Wenner, Esq., of Courter, Kobert & Cohen, PC (Hackettstown, NJ).

³ There were other records requested that are not relevant to this complaint.

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

Background⁵

Request and Response:

On April 20, 2012, the Complainant submitted an Open Public Records Act (“OPRA”) request seeking the above-listed records. On April 25, 2012, the third (3rd) business day following receipt of said request, the Custodian responded in writing disclosing some records responsive to one (1) item of the request and denying the remaining items requested because the request for the items was too vague and failed to specifically identify government records.

On May 2, 2012, the Complainant submitted an OPRA request seeking the above-listed records. On May 10, 2012, the sixth (6th) business day following receipt of said request, the Custodian’s Counsel responded in writing informing the Complainant that the Custodian would need an extension of time until May 24, 2012, to determine if any records could be located responsive to the request. Counsel also informed the Complainant that if a special service charge was necessary he would so inform the Complainant.

Denial of Access Complaint:

On July 26, 2012, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that she provided her request to the Custodian on April 20, 2012, and that the Custodian provided some of the requested records but denied the remainder of the requested records on April 25, 2012, because the request was too vague. The Complainant states that because the Custodian told her that the request was too vague, the Complainant filed another request for the same records on May 2, 2012. The Complainant contends that her May 2, 2012 request was very descriptive. The Complainant states that she received a response to her May 2, 2012 OPRA request from the Custodian’s Counsel. The Complainant states that Counsel informed her that the Custodian would need an extension of time until May 24, 2012.

The Complainant states that on May 24, 2012, she received a telephone call from the Custodian’s Counsel informing her that the municipality would need another extension of time because the Custodian, Michele D. Broubalow, died. The Complainant states that Counsel asked her to more specifically identify the requested records because her present request encompassed a voluminous amount of records and the scope of the search had to be narrowed. The Complainant states that she told Custodian’s Counsel that she wanted to know what work was performed on the Ingersoll property. The Complainant states that Counsel informed her that he would contact her when the records were available for inspection. The Complainant states that Counsel telephoned her on June 12, 2012, and scheduled an appointment for the Complainant to inspect the requested records on June 14, 2012.

The Complainant states that she inspected the requested records on June 14, 2012, but was not satisfied that the records made available to her were all of the records responsive to her

⁵ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

request. The Complainant states that in a letter she sent to the Custodian's Counsel, she expressed her disappointment with the records made available for her inspection on June 14, 2012. The Complainant states that she received a letter back from Counsel informing her that she could examine retaining wall records at no charge if she so desired.⁶ The Complainant states that she subsequently wrote to the Custodian's Counsel to tell him that she was not interested only in records pertaining to the retaining wall. The Complainant states that Counsel wrote her back and informed her that her requests were overly broad and that she would need to specifically identify the requested records.⁷

Statement of Information:

On August 13, 2012, Custodian Kleiner filed a Statement of Information ("SOI"). The Custodian certifies that Custodian Broubalow received the Complainant's OPRA requests on April 20, 2012, and May 2, 2012. The Custodian certifies that Ms. Broubalow sent a response to the April 20, 2012 request on April 25, 2012. The Custodian further certifies that with respect to the Complainant's May 2, 2012 request, responses were made by Counsel on behalf of the Custodian on May 10, 2012, June 21, 2012, and June 26, 2012.⁸

The Custodian certifies that the Complainant listed three (3) items on her April 20, 2012 request. The Custodian further certifies that Custodian Broubalow responded by disclosing records responsive to one item and informing the Complainant that the remaining two items were vague and that the Complainant needed to clarify precisely which records she was seeking. The Custodian certifies that in reply to the Custodian's April 25, 2012 response, the Complainant submitted another OPRA request on May 2, 2012, seeking the records relevant to this complaint. The Custodian certifies that in Counsel's May 10, 2012 response, he informed the Complainant that an extension of time to grant or deny access would be necessary due to the volume of records requested. The Custodian also certifies that Counsel requested that the Complainant narrow her request to specific records in order to help the Custodian comply with the request.

The Custodian certifies that on May 15, 2012, Custodian Broubalow died, and at the request of the Custodian's Counsel the Complainant consented to an extension of time until June 14, 2012, to inspect the requested records.

The Custodian certifies that ninety-three (93) records determined to be responsive to the request were made available to the Complainant; however, the Complainant only inspected thirteen (13) of those records on June 14, 2012.

The Custodian certifies that by letter dated June 19, 2012, to the Custodian's Counsel, the Complainant expressed her displeasure with the records made available to her for inspection. The Custodian further certifies that in a letter from the Custodian's Counsel to the Complainant

⁶ The evidence of record reveals that the Complainant's letter and Counsel's response were dated June 19, 2012, and June 21, 2012, respectively.

⁷ The evidence of record reveals that the Complainant's letter and Counsel's response were dated June 22, 2012, and June 26, 2012, respectively.

⁸ The evidence of record reveals that the response letters dated June 21, 2012, and June 26, 2012, were in reply to the Complainant's follow-up letters.

dated June 21, 2012, Counsel informed the Complainant that her OPRA request was extremely broad and that the town was only obligated to respond to requests that specifically identify government records. The Custodian certifies that, notwithstanding the broad request, the town wanted to help the Complainant obtain the records she said she needed to address a flooding problem in her home. The Custodian certifies that the Custodian's Counsel informed the Complainant that records relating to the construction of a retaining wall would be made available for inspection. The Custodian further certifies that by letter dated June 22, 2012, the Complainant advised the town that she was not interested in information relating solely to the retaining wall, but wanted all of the records set forth in her May 2, 2012 OPRA request. The Custodian certifies that the Custodian's Counsel sent the Complainant a letter dated June 26, 2012, which informed the Complainant that her request was too broad and that she had to request specific records.

The Custodian certifies that she was not obligated to comply with the Complainant's requests because on numerous occasions the Complainant was asked to identify specific records, or otherwise narrow her search request, but the Complainant failed to do so. The Custodian certifies that the Complainant's requests are not valid because they are requests for an open-ended search of government records and OPRA is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. In support of her argument, the Custodian cites 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).

Analysis⁹

Timeliness

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). As also prescribed under N.J.S.A. 47:1A-5(i), a custodian's failure to respond within the required seven (7) business days results in a "deemed" denial. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).¹⁰ Thus, a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

Further, OPRA provides that a custodian may request an extension of time to respond to the Complainant's OPRA request, but that a specific date for when the Custodian will respond

⁹ There may be other OPRA issues in this matter; however, the Council's analysis is based solely on the claims made in the Complainant's Denial of Access Complaint.

¹⁰ It is the GRC's position that a custodian's written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

must be provided. N.J.S.A. 47:1A-5(i). OPRA also 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). *See also Starkey v. NJ Department of Transportation*, GRC Complaint Nos. 2007-315, 2007-316 and 2007-317 (February 2009) and *Paff v. Franklin Fire District No. 1 (Somerset)*, GRC Complaint No. 2011-77 (June 2012).

Here, the Custodian certified that Custodian Broubalow received the Complainant’s second OPRA request on May 2, 2012. The Custodian further certified that the Custodian’s Counsel responded to the request on May 10, 2012, the sixth (6th) business day following the Custodian’s receipt of said request, seeking an extension of time until May 24, 2012, in order to address the Complainant’s request.

Since the Custodian’s Counsel requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated deadline date of when the Complainant’s request would be addressed, the Custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i). *See also Starkey, supra* and *Paff, supra*.

Despite properly requesting an extension of time, however, the Custodian failed to respond to the Complainant’s OPRA request in writing within the extended deadline. Custodian’s Counsel stated that, following Custodian Broubalow’s death on May 15, 2012, the Complainant agreed to another extension of time until June 14, 2012, but he failed to describe the means by which the need for an additional extension of time was communicated to the Complainant. The Complainant stated that on May 24, 2012, she received a telephone call from the Custodian’s Counsel informing her that the municipality would need another extension of time because Custodian Broubalow had died. The evidence of record supports the Complainant’s statement that the need for an additional extension of time was communicated via a telephone call from the Custodian’s Counsel because there is no written document in the evidence of record dated on or about May 24, 2012, requesting an additional extension of time.

Therefore, Custodian Kleiner violated N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), resulting in a “deemed” denial of the Complainant’s OPRA request because she failed to provide the Complainant with a written response either granting access, denying access, seeking clarification, or requesting an additional extension of time within the extended time period. *See also Kelley, supra*.

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

The New Jersey Superior Court has held that “[w]hile OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not*

intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying, or examination.' N.J.S.A. 47:1A-1." (Emphasis added.) MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). The Court further held that "[u]nder OPRA, agencies are required to disclose only 'identifiable' government records not otherwise exempt ... In short, OPRA does not countenance open-ended searches of an agency's files." (Emphasis added.) *Id.* at 549.

In determining that MAG Entertainment's request for "all documents or records" from the Division of Alcoholic Beverage Control pertaining to selective enforcement was invalid under OPRA, the Appellate Division noted that:

"[m]ost 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.

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),¹¹ the Superior Court references MAG in that the Court held that a requestor must specifically describe the document sought because OPRA operates to make identifiable government records "accessible." "As such, a proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents." *Id.*

Additionally, in New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007) the court cited MAG by stating that "...when a request is 'complex' because it fails to specifically identify the documents sought, then that request is not 'encompassed' by OPRA..."

Here, the Complainant's April 20, 2012 OPRA request sought (1) "**any and all correspondence and documents** between the Town of Phillipsburg, its officials, employees, or agents **sent to or received from** Ingersoll-Rand, its officials, employees or agents with regard to the Ingersoll property for the past five (5) years;" and (2) "**any documents or correspondence relating to** the Ingersoll property for the past five (5) years **from any other source.**" (Emphasis added.)

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

The Complainant's April 20, 2012 request sought any and all records by and between several classes of persons for a five (5) year period. Although this is a very broad request, the second part of the Complainant's request was even broader because it included a request for records "relating to" certain property from *any* source. This request does not just require the Custodian to conduct research, but also to determine in what way a record could relate to some other entity. The records were not specifically identified in this request and, as such, the Custodian was under no legal obligation to grant access because "[u]nder OPRA, agencies are required to disclose only 'identifiable' government records not otherwise exempt..." See MAG, *supra*.

The Custodian denied the request by informing the Complainant that it was too vague and that it must specifically identify the requested records. The Complainant then filed another request on May 2, 2012, seeking the same records. The Complainant's May 2, 2012 request, which the Complainant characterized as "very descriptive" sought:

"...any and all documents, including but not limited to, letters, memoranda, applications, resolutions, ordinances, financial records, e-mails, file notes, photographs, inspection reports, recordings (audio, visual or otherwise), etc., between the Town of Phillipsburg, its officials, employees, or agents without limitation and Ingersoll-Rand and any other owners of stated property, their officials, employees, or agents on file concerning the Ingersoll-Rand property, Block 3301, Lots 2, 4, 4.022, 5 and 6 and Block 3201, Lots 7.02 and 7.03 for the past five (5) years from January 1, 2007 to May 2, 2012. Officials, employees or agents are meant to include the Mayor, current and former Council members, Town Counsel, Town Engineer, Administrator, Zoning Officer, Public Works Director, contractors and any other necessarily related agents of the town." (Emphasis added.)

Although the Complainant's request may be more descriptive in terms of providing a specified timeframe and identifying certain property by block and lot number, it is just as all-encompassing as her April 20, 2012 request. In this request, the Complainant again expects the Custodian to locate all documents by and between several individuals and/or entities. Moreover, the complainant fails to specifically identify any of the records she is seeking, but merely provides the Custodian with a list of several types of records within which the records she is seeking may be found. As such, the May 2, 2012 request is overly broad and invalid.

Although the Custodian did locate many records that could be responsive to the Complainant's request, this matter is substantially different from the facts presented in Gannett v. County of Middlesex, 379 N.J. Super. 205 (App. Div. 2005). In Gannett, the Court held that although Gannett's request was improper and Middlesex County could have refused to produce any records responsive, Middlesex County instead provided Gannett with most of the records responsive to the request, denying access to the remaining records based on confidentiality claims. Gannett brought an action against the County of Middlesex seeking disclosure of the remainder of the records responsive. The Court held that "[s]uch a voluntary disclosure of most of the documents sought by Gannett and refusal to release the remaining documents solely on confidentiality grounds constituted a waiver of whatever right the County may have had to deny

Gannett's entire OPRA request on the ground that it was improper.” *Id.* at 213. This complaint is distinguishable from Gannett in that the Custodian and Counsel here informed the Complainant that her request was overly broad and sought clarification in writing on three (3) separate occasions. The Custodian and Counsel never identified in their response to the OPRA requests the records the Complainant alleged were denied, for it is clear from the evidence of record that the Custodian and Custodian’s Counsel did not understand specifically which records the Complainant was seeking. Thus, the Custodian did not waive any right to deny the request on the grounds that it was improper.

This matter is also 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. Here, the Complainant failed to identify a “specific type of document,” but rather requested “any and all documents...without limitation.”

Further, in Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012), the Court noted that plaintiff's request was confined to a specific subject matter that was clearly and reasonably described with sufficient identifying information, namely, EZ-Pass benefits provided to Port Authority retirees. The Court determined that, as in Burnett, *supra*, the request was limited to particularized, identifiable government records, namely, correspondence with another government entity, rather than information generally. The Court further held that the defendant “performed a search and was able to locate records responsive ...” which “... belied any assertion that the request was lacking in specificity or was overbroad.” *Id.* at 177. Here, the complaint is distinguishable from Burke in that the Complainant failed to identify any specific government records.

The Complainant’s request here more closely resembles the facts in MAG, *supra*, and NJ Builders, *supra* wherein both courts determined that a valid OPRA request must seek *identifiable government records* and *a party cannot satisfy this requirement by requesting all of an agency’s documents* (emphasis added). Seeking “any and all documents...without limitation” does not meet the standard of a valid OPRA request, and a custodian cannot be found to have unlawfully denied access to records which were not properly requested in the first place.

Therefore, notwithstanding the Custodian’s “deemed denial,” the Custodian has not unlawfully denied access to the records the Complainant asserts were withheld because the Complainant’s OPRA request is overly broad and invalid. See MAG, *supra*, Bent, *supra*, and NJ Builders, *supra*.

Knowing & Willful

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)).

Therefore, although there was a “deemed denial” of the Complainant’s OPRA request, the Custodian did not unlawfully deny access to the requested records because the Complainant’s request was overly broad and invalid. As such, the Custodian’s actions did 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. Custodian Kleiner violated N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), resulting in a “deemed” denial of the Complainant’s OPRA request because she failed to provide the Complainant with a written response either granting access, denying access, seeking clarification, or requesting an additional extension of time within the extended time period. *See also* Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. Notwithstanding the Custodian’s “deemed denial,” the Custodian has not unlawfully denied access to the records the Complainant asserts were withheld because the Complainant’s OPRA request is overly broad and invalid. *See* MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005), and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007).
3. Although there was a “deemed denial” of the Complainant’s OPRA request, the Custodian did not unlawfully deny access to the requested records because the Complainant’s request was overly broad and invalid. As such, the Custodian’s actions did 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: Brandon D. Minde, Esq.
Executive Director

June 18, 2013