



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 29, 2014 Government Records Council Meeting

Barbara Kulig
Complainant

Complaint No. 2013-178

v.

Cumberland County Improvement Authority
Custodian of Record

At the July 29, 2014 public meeting, the Government Records Council (“Council”) considered the July 22, 2014 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. On June 4, 2013, the Complainant submitted her OPRA requests to the Custodian. On June 10, 2013, the Complainant verified her complaint, four (4) business days from the date the Custodian received the Complainant’s OPRA request. OPRA provides that the Custodian “shall grant access to a government record or deny access to a government record as soon as possible, but not later than seven business days after receiving the request . . .” N.J.S.A. 47:1A-5(i). Here, because the requested records are not immediate access records, the Complainant verified her complaint before the statutory time period had expired; therefore the complaint regarding these requests is materially defective and must be dismissed. Sallie v. N.J. Dep’t of Banking and Insurance, GRC Complaint No. 2007- 226 (April 2009); Herron v. Borough of Red Bank (Monmouth), GRC Complaint No. 2012-113 (April 2012).
2. On June 6, 2013, the Complainant submitted her OPRA request to the Custodian. On June 10, 2013, the Complainant verified her complaint, which was two (2) business days from the date the Custodian received the Complainant’s OPRA request. OPRA provides that the Custodian “shall grant access to a government record or deny access to a government record as soon as possible, but not later than seven business days after receiving the request . . .” N.J.S.A. 47:1A-5(i). Here, because the requested records are not immediate access records, the Complainant verified her complaint before the statutory time period had expired; therefore the complaint regarding this request is materially defective and must be dismissed. Sallie v. N.J. Dep’t of Banking and Insurance, GRC Complaint No. 2007- 226 (April 2009); Herron v. Borough of Red Bank (Monmouth), GRC Complaint No. 2012-113 (April 2012).



3. On June 9, 2013, the Complainant submitted her OPRA requests to the Custodian. On June 10, 2013, the Complainant verified her complaint, the same day the Custodian received the Complainant's OPRA request. OPRA provides that the Custodian "shall grant access to a government record or deny access to a government record as soon as possible, but not later than seven business days after receiving the request . . ." N.J.S.A. 47:1A-5(i). Here, because the requested records are not immediate access records, the Complainant verified her complaint before the statutory time period had expired; therefore the complaint regarding these requests is materially defective and must be dismissed. Sallie v. N.J. Dep't of Banking and Insurance, GRC Complaint No. 2007- 226 (April 2009); Herron v. Borough of Red Bank (Monmouth), GRC Complaint No. 2012-113 (April 2012).
4. On June 11, 2013, the Complainant submitted her OPRA request to the Custodian. On June 14, 2013, the Complainant verified her amended complaint, three (3) business days from the date the Custodian received the Complainant's OPRA request. OPRA provides that the Custodian "shall grant access to a government record or deny access to a government record as soon as possible, but not later than seven business days after receiving the request . . ." N.J.S.A. 47:1A-5(i). Here, because the requested records are not immediate access records, the Complainant verified her complaint before the statutory time period had expired; therefore the complaint regarding this request is materially defective and must be dismissed. Sallie v. N.J. Dep't of Banking and Insurance, GRC Complaint No. 2007- 226 (April 2009); Herron v. Borough of Red Bank (Monmouth), GRC Complaint No. 2012-113 (April 2012).
5. On June 13, 2013, the Complainant submitted her OPRA request to the Custodian. On June 14, 2013, the Complainant verified her complaint, one (1) business day from the date the Custodian received the Complainant's OPRA request. OPRA provides that the Custodian "shall grant access to a government record or deny access to a government record as soon as possible, but not later than seven business days after receiving the request . . ." N.J.S.A. 47:1A-5(i). Here, because the requested records are not immediate access records, the Complainant verified her complaint before the statutory time period had expired; therefore the complaint regarding this request is materially defective and must be dismissed. Sallie v. N.J. Dep't of Banking and Insurance, GRC Complaint No. 2007- 226 (April 2009); Herron v. Borough of Red Bank (Monmouth), GRC Complaint No. 2012-113 (April 2012).
6. Although the Custodian timely responded to the Complainant's May 18, 2013 OPRA request seeking an extension of time to respond until June 7, 2013, the Custodian's failure to respond in writing within the extended time frame results in a "deemed" denial. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
7. Notwithstanding the Custodian's "deemed" denial, she did not unlawfully deny access to the Complainant's May 18, 2013 OPRA request and June 4, 2013 OPRA Request No. 2. N.J.S.A. 47:1A-6. The Complainant's requests are invalid as overly broad, and fail to identify specific government records. Kulig v. Cumberland Cnty.

Bd. of Freeholders, GRC Complaint No. 2008-263 (November 2009); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council of Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

8. Although the Custodian violated N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), the evidence of record demonstrates that the Complainant's May 18, 2013 OPRA request is invalid as overly broad, and fails to identify specific government records. Finally, 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, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and an 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 29th Day of July, 2014

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: July 31, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
July 29, 2014 Council Meeting**

**Barbara Kulig¹
Complainant**

GRC Complaint No. 2013-178

v.

**Cumberland County Improvement Authority²
Custodial Agency**

Records Relevant to Complaint:³

May 18, 2013 OPRA Request: “Copies of records of all Lots of Block 76 in Cumberland County, Deerfield Township, NJ owned by the CCIA [‘Cumberland County Improvement Authority’] – Date of Purchase and Amount with Acknowledgement of Grantor and Grantee.”

June 4, 2013 OPRA Request No. 1: “Copies of all records of fraud in obtaining Block 76 Lot 5 by the Cumberland County Improvement Authority, Cumberland County Officials, and Deerfield Township.”

June 4, 2013 OPRA Request No. 2: “Copies of all records legally identified as fraud committed by Cumberland County Improvement Authority officials and employees to obtain Block 76 Lot 5 from lawful owners (Grantor and Grantee) identified in the only legal Deed executed October 2, 1952 for Block 76 Lot 5 and the Will admitted to Probate on May 3, 1990.”

June 6, 2013 OPRA Request: “Electronic copies of records . . . regarding the record reasons for the removal of the Deed/Sr1a of Block 76 for the following Lots 1, 5, 7, 8, 10, 11, 13 through 19, 23, 28, 29, 30, and 31 confirmed as removed on the website NJ/ACTB.org as well as the dates of their individual removal, and again for each, the sale price and the date of sale.”

June 9, 2013 OPRA Request No. 1: Hard copies of:

1. “Records identifying Naheed Clendaniel as a HR Administrative Assistant, the recipient of employment resumes, allegedly not the CCIA Custodian of Records legally responsible to sign for the accuracy of Requested Records.”
2. “Records of the appointment on July 19, 2011 of Fralinger Engineering, the designated Respondent and the official engineer of Deerfield Township, as the CCIA solar developer for the completion of the CCIA project in December 2012 per Page 25, No. 19,

¹ No legal representation listed on record.

² Represented by Michael L. Testa, Esq., of Testa, Heck, Scrocca, & Testa, P.A. (Vineland, NJ).

³ The Complainant made additional requests, but did not refer to them in her original complaint or amended complaint, and therefore are not at issue in this matter.

Construction Completion Date December 2012 stated in the Cumberland County Renewable Energy Program issued by the CCIA on August 30, 2011.”

3. “Records identifying the Lots owned in Block 76 by the CCIA, now especially for Block 76 Lot 6 given the knowledge of the completion date in December 2012 of the CCIA solar project.”
4. “Records for the price of sale, date of sale, and Grantor/Grantee for each Lot of Block 76 now owned by the CCIA.”
5. “Records regarding the removal known to me in July 2008 of the Deed/Sr1a of Block 76 Lot 5, 773 Lebanon Road, Millville, NJ 08332 in the names of John Sophie B. Kulig in which the Deed and Will are in my possession since the death of my father, John Kulig, on April 22, 1990.”
6. “Records for the recent observation on June 6, 2013 of the removal of the greater quantities of Block 76’s identified Lots 1, 5, 7, 8, 10, 11, 13 through 19, 23, 28, 29, 30, and 32.”

June 9, 2013 OPRA Request No. 1: Copies of:

1. “Records for the execution of a Quit Deed or other false sale allegedly known to the CCIA, the date of occurrence, and the names of the individuals who profited ultimately.”
2. “Records [that] provide information for the removal on the Internet of all Jerry Velasquez’s employment as the Executive Director of the Cumberland County Empowerment Zone Corporation and continued work after my referral to 2009.”
3. “Records regarding the alleged false statement of possibly forwarding by June 7, 2013, the disposition of CCIA properties in Block 76 resulting in time lost for a referral of a Lack of Access Complaint [sic] to the GRC.

Records sent by email must be part of the body, not an attachment or posted by mail[, S]ince I cannot open attachments.”

June 11, 2013 OPRA Request: “Copies of records concerning the removal from the Internet Jerry Velasquez’s employment as Executive Director of the Cumberland County Empowerment Zone Corporation.”

June 13, 2013 OPRA Request: “Copies of records of the CCIA Board Meeting Agendas each Wednesday of the month beginning with July 2011 to December 2012.”

Custodian of Record: Naheed Clandaniel

Request Received by Custodian: May 18, 2013; June 4, 2013; June 6, 2013; June 9, 2013; June 11, 2013; June 13, 2013

Response Made by Custodian: May 29, 2013; June 7, 2013; June 19, 2013

GRC Complaint Received: June 12, 2013; June 18, 2013 (Amended)

Background⁴

Request and Response:

On May 18, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request, via email, to the Custodian seeking the records set forth above as her May 18, 2013 request. On May 29, 2013, seven (7) business days later, the Custodian responded, in writing, stating that she is researching the Complainant’s request, and would provide a response to the Complainant by the end of the following week.

On June 4, 2013, the Complainant submitted two (2) additional OPRA requests to the Custodian. On June 6, 2013, the Complainant submitted another request to the Custodian.

Three (3) business days after receiving the Complainant’s June 4, 2013 OPRA requests, the Custodian responded, via letter, denying the Complainant’s June 4 Request No. 2. The Custodian stated that the Complainant’s request was vague and did not identify specific government records. The Custodian also stated that of those records she discerned from the Complainant’s request, none would be in the Custodian’s possession.

On June 9, 2013,⁵ the Complainant submitted two (2) additional requests, designated as June 9, 2013 Request Nos. 1 and 2, to the Custodian. The Complainant submitted two (2) more OPRA requests to the Custodian on June 11, 2013 and June 13, 2013, respectively.

The Custodian responded to the Complainant’s June 9, 2013 Request Nos. 1 and 2 on June 19, 2013, seven (7) business days later. With the exception of request Item Nos. 1 & 2 of the Complainant’s June 9, 2013 Request No. 1, the Custodian denied her requests because they failed to identify specific, government records. Furthermore, the Custodian stated that the Complainant’s requests sought information, rather than documents.

At some time prior to July 10, 2013, the Custodian provided the Complainant with responsive documents to her June 13, 2013 OPRA request.

Denial of Access Complaint:

On June 12, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant verified her complaint on June 10, 2013. The complaint referenced the OPRA requests of May 18, 2013, June 4, 2013, June 6, 2013, and June 9, 2013. The Complainant argued that she had not received a response from the Custodian beyond the May 29, 2013 email seeking an extension of time to respond.

⁴ 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.

⁵ June 9, 2013 was a Sunday; presumably, the Custodian received the OPRA requests on June 10, 2013.

Amended Denial of Access Complaint:

On June 18, 2013, the Complainant filed an Amended Denial of Access Complaint with the GRC. The Complainant verified her amended complaint on June 14, 2013, and addressed her June 11, 2013 and June 13, 2013 OPRA requests therein. The Complainant also included the Custodian's June 7, 2013 response, which denied the Complainant's June 4 Request No. 2.

Statement of Information:

On October 18, 2013, the Custodian filed a Statement of Information ("SOI"). The Custodian provided a document index explaining the response (if any) made to each OPRA request. Further, she included the legal and factual basis upon which she denied access. The Custodian's SOI included correspondence dated June 7, 2013, demonstrating that she responded to the Complainant's June 4 Request No. 2. Finally, the Custodian denied the Complainant's remaining OPRA requests as invalid.

Analysis

Unripe Cause of Action

OPRA provides that "a custodian of a government record shall grant access to a government record or deny access to a government record as soon as possible, but not later than *seven business days after receiving the request . . .*" N.J.S.A. 47:1A-5(i) (emphasis added). OPRA further states that "[a] person who is denied access to a government record by the custodian of the record . . . may institute a proceeding to challenge the custodian's decision by filing . . . a complaint with the Government Records Council . . ." N.J.S.A. 47:1A-6.

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

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

Id.; see also Herron v. Borough of Red Bank (Monmouth), GRC Complaint No. 2012-113 (April 2012).

June 4, 2013 OPRA Request Nos. 1 and 2

On June 4, 2013, the Complainant submitted her OPRA requests to the Custodian. On June 10, 2013, the Complainant verified her complaint, four (4) business days from the date the

Custodian received the Complainant's OPRA request. OPRA provides that the Custodian "shall grant access to a government record or deny access to a government record as soon as possible, but not later than seven business days after receiving the request . . ." N.J.S.A. 47:1A-5(i). Here, because the requested records are not immediate access records, the Complainant verified her complaint before the statutory time period had expired; therefore the complaint regarding these requests is materially defective and must be dismissed. Sallie, GRC No. 2007-226; Herron, GRC No. 2012-113.

June 6, 2013 OPRA Request

On June 6, 2013, the Complainant submitted her OPRA request to the Custodian. On June 10, 2013, the Complainant verified her complaint, which was two (2) business days from the date the Custodian received the Complainant's OPRA request. OPRA provides that the Custodian "shall grant access to a government record or deny access to a government record as soon as possible, but not later than seven business days after receiving the request . . ." N.J.S.A. 47:1A-5(i). Here, because the requested records are not immediate access records, the Complainant verified her complaint before the statutory time period had expired; therefore the complaint regarding this request is materially defective and must be dismissed. Sallie, GRC No. 2007-226; Herron, GRC No. 2012-113.

June 9, 2013 OPRA Request Nos. 1 and 2

On June 9, 2013, the Complainant submitted her OPRA requests to the Custodian. On June 10, 2013, the Complainant verified her complaint, the same day the Custodian received the Complainant's OPRA request. OPRA provides that the Custodian "shall grant access to a government record or deny access to a government record as soon as possible, but not later than seven business days after receiving the request . . ." N.J.S.A. 47:1A-5(i). Here, because the requested records are not immediate access records, the Complainant verified her complaint before the statutory time period had expired; therefore the complaint regarding these requests is materially defective and must be dismissed. Sallie, GRC No. 2007-226; Herron, GRC No. 2012-113.

June 11, 2013 OPRA Request

On June 11, 2013, the Complainant submitted her OPRA request to the Custodian. On June 14, 2013, the Complainant verified her amended complaint, three (3) business days from the date the Custodian received the Complainant's OPRA request. OPRA provides that the Custodian "shall grant access to a government record or deny access to a government record as soon as possible, but not later than seven business days after receiving the request . . ." N.J.S.A. 47:1A-5(i). Here, because the requested records are not immediate access records, the Complainant verified her complaint before the statutory time period had expired; therefore the complaint regarding this request is materially defective and must be dismissed. Sallie, GRC No. 2007-226; Herron, GRC No. 2012-113.

June 13, 2013 OPRA Request

On June 13, 2013, the Complainant submitted her OPRA request to the Custodian. On June 14, 2013, the Complainant verified her complaint, one (1) business day from the date the Custodian received the Complainant's OPRA request. OPRA provides that the Custodian "shall grant access to a government record or deny access to a government record as soon as possible, but not later than seven business days after receiving the request . . ." N.J.S.A. 47:1A-5(i). Here, because the requested records are not immediate access records, the Complainant verified her complaint before the statutory time period had expired; therefore the complaint regarding this request is materially defective and must be dismissed. Sallie, GRC No. 2007-226; Herron, GRC No. 2012-113.

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). A custodian's failure to respond within the required seven (7) business days results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).⁶ 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. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

May 18, 2013 OPRA Request

OPRA provides that a custodian may seek an extension of time to respond to the complainant's OPRA request, but the custodian must provide a specific date to respond. N.J.S.A. 47:1A-5(i). OPRA further provides that should the custodian fail to provide a response on that specific date, "access shall be deemed denied." N.J.S.A. 47:1A-5(i).

On May 29, 2013 the Custodian sent a letter to the Complainant via email, seeking an extension of time to respond to the Complainant's May 18, 2013 OPRA request. The Custodian stated that she would respond approximately two (2) weeks from May 29, 2013.

In Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008), the custodian sought an extension of time until April 20, 2007 to respond to the complainant's March 19, 2007 OPRA request. On April 20, 2007, the custodian sought an additional extension of time to respond to later that week; however, the evidence of record showed that the custodian did not produce responsive records until May 31, 2007. Id. The Council held that:

[t]he Custodian properly requested an extension of time to provide the requested

⁶ A custodian's written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

records to the Complainant by requesting such extension in writing within the statutorily mandated seven (7) business days pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i) . . . however . . . [b]ecause the Custodian failed to provide the Complainant access to the requested records by the extension date anticipated by the Custodian, the Custodian violated N.J.S.A. 47:1A-5(i) resulting in a “deemed” denial of access to the records.

Id.

Similar to Kohn, the Custodian timely responded to the Complainant’s May 18, 2013 request, in writing, seeking an extension to respond “possibly by end of next week 6/7/13.” Id. However, the evidence of record demonstrates that the Custodian’s June 7, 2013 response did not address the Complainant’s May 18, 2013 request.

Therefore, although the Custodian timely responded to the Complainant’s May 18, 2013 OPRA request seeking an extension of time to respond until June 7, 2013, the Custodian’s failure to respond in writing within the extended time frame results in a “deemed” denial. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Kohn, GRC No. 2007-124.

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 Appellate Division has 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.” MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005) (emphasis added). *See also* N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). In addition, a valid 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.” Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005).⁷

The Court in MAG further held that:

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

⁷ Affirming Bent v. Stafford Police Dep’t, GRC Complaint No. 2004-78 (October 2004).

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.

375 N.J. Super. at 549 (emphasis added).

May 18, 2013 OPRA Request⁸

In a previously adjudicated matter, the Complainant sought “any and all information, records and knowledge” relating to the economic and redevelopment condition of Block 76, Lot 5 in Deerfield Township, New Jersey. Kulig v. Cumberland Cnty. Bd. of Freeholders, GRC Complaint No. 2008-263 (November 2009). The Council held that the Complainant’s request was invalid as overly broad, as her request for “all records” failed to identify a specific government record. Id. Moreover, the Council found that the Complainant’s request for “any and all information . . . and knowledge” was a request for information, and not a government record. Id.

Here, the Complainant’s May 28, 2013 OPRA request sought “records of all Lots of Block 76 in Cumberland County, Deerfield Township, NJ owned by the CCIA [Cumberland County Improvement Authority].” Like the Complainant’s prior request in Kulig, a request for “records” does not identify a specific government record or even a class of records. GRC No. 2008-263. *See also* Bent, 381 N.J. Super. at 37.

Therefore, notwithstanding the Custodian’s “deemed” denial, she did not unlawfully deny access to the Complainant’s May 18, 2013 OPRA request. N.J.S.A. 47:1A-6. The Complainant’s request is invalid as overly broad, and fails to identify specific government records. Kulig, GRC No. 2008-263; Bent, 381 N.J. Super. at 37; MAG, 375 N.J. Super. at 546; N.J. Builders Ass’n, 390 N.J. Super. at 166; Schuler, GRC No. 2007-151.

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 “. . . [i]f 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

⁸ Despite the evidence of record demonstrating that the Complainant’s June 4, 2013 Request No. 2 is unripe for adjudication, the request seeking “all records” also does not identify a specific government record. *See* Kulig, GRC No. 2008-263.

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 (Id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (E.C.E.S. v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Although the Custodian violated N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), the evidence of record demonstrates that the Complainant's May 18, 2013 OPRA request is invalid as overly broad, and fails to identify specific government records. Finally, 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, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. On June 4, 2013, the Complainant submitted her OPRA requests to the Custodian. On June 10, 2013, the Complainant verified her complaint, four (4) business days from the date the Custodian received the Complainant's OPRA request. OPRA provides that the Custodian "shall grant access to a government record or deny access to a government record as soon as possible, but not later than seven business days after receiving the request . . ." N.J.S.A. 47:1A-5(i). Here, because the requested records are not immediate access records, the Complainant verified her complaint before the statutory time period had expired; therefore the complaint regarding these requests is materially defective and must be dismissed. Sallie v. N.J. Dep't of Banking and Insurance, GRC Complaint No. 2007- 226 (April 2009); Herron v. Borough of Red Bank (Monmouth), GRC Complaint No. 2012-113 (April 2012).
2. On June 6, 2013, the Complainant submitted her OPRA request to the Custodian. On June 10, 2013, the Complainant verified her complaint, which was two (2) business days from the date the Custodian received the Complainant's OPRA request. OPRA provides that the Custodian "shall grant access to a government record or deny access to a government record as soon as possible, but not later than seven business days after receiving the request . . ." N.J.S.A. 47:1A-5(i). Here, because the requested records are not immediate access records, the Complainant verified her complaint before the statutory time period had expired; therefore the complaint regarding this request is materially defective and must be dismissed. Sallie v. N.J. Dep't of Banking

and Insurance, GRC Complaint No. 2007- 226 (April 2009); Herron v. Borough of Red Bank (Monmouth), GRC Complaint No. 2012-113 (April 2012).

3. On June 9, 2013, the Complainant submitted her OPRA requests to the Custodian. On June 10, 2013, the Complainant verified her complaint, the same day the Custodian received the Complainant's OPRA request. OPRA provides that the Custodian "shall grant access to a government record or deny access to a government record as soon as possible, but not later than seven business days after receiving the request . . ." N.J.S.A. 47:1A-5(i). Here, because the requested records are not immediate access records, the Complainant verified her complaint before the statutory time period had expired; therefore the complaint regarding these requests is materially defective and must be dismissed. Sallie v. N.J. Dep't of Banking and Insurance, GRC Complaint No. 2007- 226 (April 2009); Herron v. Borough of Red Bank (Monmouth), GRC Complaint No. 2012-113 (April 2012).
4. On June 11, 2013, the Complainant submitted her OPRA request to the Custodian. On June 14, 2013, the Complainant verified her amended complaint, three (3) business days from the date the Custodian received the Complainant's OPRA request. OPRA provides that the Custodian "shall grant access to a government record or deny access to a government record as soon as possible, but not later than seven business days after receiving the request . . ." N.J.S.A. 47:1A-5(i). Here, because the requested records are not immediate access records, the Complainant verified her complaint before the statutory time period had expired; therefore the complaint regarding this request is materially defective and must be dismissed. Sallie v. N.J. Dep't of Banking and Insurance, GRC Complaint No. 2007- 226 (April 2009); Herron v. Borough of Red Bank (Monmouth), GRC Complaint No. 2012-113 (April 2012).
5. On June 13, 2013, the Complainant submitted her OPRA request to the Custodian. On June 14, 2013, the Complainant verified her complaint, one (1) business day from the date the Custodian received the Complainant's OPRA request. OPRA provides that the Custodian "shall grant access to a government record or deny access to a government record as soon as possible, but not later than seven business days after receiving the request . . ." N.J.S.A. 47:1A-5(i). Here, because the requested records are not immediate access records, the Complainant verified her complaint before the statutory time period had expired; therefore the complaint regarding this request is materially defective and must be dismissed. Sallie v. N.J. Dep't of Banking and Insurance, GRC Complaint No. 2007- 226 (April 2009); Herron v. Borough of Red Bank (Monmouth), GRC Complaint No. 2012-113 (April 2012).
6. Although the Custodian timely responded to the Complainant's May 18, 2013 OPRA request seeking an extension of time to respond until June 7, 2013, the Custodian's failure to respond in writing within the extended time frame results in a "deemed" denial. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
7. Notwithstanding the Custodian's "deemed" denial, she did not unlawfully deny

access to the Complainant's May 18, 2013 OPRA request and June 4, 2013 OPRA Request No. 2. N.J.S.A. 47:1A-6. The Complainant's requests are invalid as overly broad, and fail to identify specific government records. Kulig v. Cumberland Cnty. Bd. of Freeholders, GRC Complaint No. 2008-263 (November 2009); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council of Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

8. Although the Custodian violated N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), the evidence of record demonstrates that the Complainant's May 18, 2013 OPRA request is invalid as overly broad, and fails to identify specific government records. Finally, 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, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

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Acting Executive Director

July 22, 2014