



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

July 30, 2019 Government Records Council Meeting

Robert J. Chester
Complainant

Complaint No. 2015-50

v.

Pleasantville Housing Authority (Atlantic)
Custodian of Record

At the July 30, 2019 public meeting, the Government Records Council (“Council”) considered the July 23, 2019 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that the Council should accept the Honorable Catherine A. Tuohy’s, Administrative Law Judge Initial Decision concluding that the Custodian “did not knowingly and willfully” violate OPRA. Further, the Council should accept the Administrative Law Judge’s order that this complaint be “**DISMISSED** with prejudice.” Thus, no further adjudication is required.

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 30th Day of July 2019

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: August 2, 2019



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Council Staff
July 30, 2019 Council Meeting**

**Robert J. Chester¹
Complainant**

GRC Complaint No. 2015-50

v.

**Pleasantville Housing Authority (Atlantic)²
Custodial Agency**

Records Relevant to Complaint: See Exhibit A.

Custodian of Record: Dave Caracciolo

Request Received by Custodian: December 16, 2014

Response Made by Custodian: December 22, 2014

GRC Complaint Received: March 3, 2015

Background

September 26, 2017 Council Meeting:

At its September 26, 2017 public meeting, the Council considered the September 19, 2017 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The Custodian failed to comply fully with the Council's March 28, 2017 Interim Order. Specifically, the Custodian responded within the extended time frame and simultaneously provided certified confirmation of compliance to the Executive Director. However, the response brought into question the electronic availability of records, copy cost issues, and the existence of records that he certified did not exist.
2. This complaint should be referred to the Office of Administrative Law for a fact-finding hearing determine: 1) the Pleasantville Housing Authority's ability to disclose all responsive records electronically; 2) whether the Custodian lawfully proposed a special service charge (for all records); 3) whether the Custodian lawfully implemented a \$0.10 per page copy cost in lieu of providing records electronically; and 4) whether the Custodian should have located and provided those records sought in requested item Nos. 24, 27, 28, and 29.

¹ No legal representation listed on record. The Complainant did note in the Denial of Access Complaint that he was representing himself.

² Represented by Karen A. Murray, Esq., of The Murray Law Firm, LLC (Little Silver, NJ).

3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances, pending the Office of Administrative Law’s decision in this complaint.
4. The Council defers analysis of whether the Complainant is a prevailing party, pending the Office of Administrative Law’s decision in this complaint.

Procedural History:

On September 28, 2017, the Council distributed its Interim Order to all parties. On November 24, 2017, the Government Records Council (“GRC”) transmitted this consolidated complaint to the Office of Administrative Law (“OAL”).

On May 9, 2019, the Honorable Catherine A. Tuohy, Administrative Law Judge (“ALJ”), issued an Initial Decision “**CONCLUD[ING]** that the [Custodian] did not knowingly and willfully violate OPRA and did not unreasonably deny access to the requested documents under the totality of the circumstances.” Id. at 9. The ALJ further held that “It is **ORDERED** that the GRC complaint against the [Pleasantville Housing Authority (“PHA”)] be **DISMISSED** with prejudice.” Id. at 10.

Exceptions:

On June 3, 2019, the Complainant attempted to file written exceptions. On June 21, 2019, the GRC rejected said exceptions because they untimely filed. N.J.S.A. 52:14B-10; N.J.A.C. 1:1-18.4.

Extension of Time:

On June 21, 2019, the GRC requested a forty-five (45) day extension of the statutory time period, or until August 9, 2019, to adopt, reject, or modify the ALJ’s Initial Decision. On June 24, 2019, the OAL granted said extension.

Analysis

Administrative Law Judge’s Initial Decision

The Administrative Procedures Act (“APA”) provides that:

The head of the agency, upon a review of the record submitted by the [ALJ], shall adopt, reject or modify the [Initial Decision] no later than 45 days after receipt of such recommendations . . . Unless the head of the agency modifies or rejects the report within such period, the decision of the administrative law judge shall be deemed adopted as the final decision of the head of the agency.

[N.J.S.A. 52:14B-10(c).]

The ALJ's findings of fact are entitled to deference from the GRC because they are based upon the ALJ's determination of the credibility of the parties. "The reason for the rule is that the administrative law judge, as a finder of fact, has the greatest opportunity to observe the demeanor of the involved witnesses and, consequently, is better qualified to judge their credibility." In the Matter of the Tenure Hearing of Tyler, 236 N.J. Super. 478, 485 (App. Div. 1989) (certif. denied 121 N.J. 615 (1990)). The Appellate Division affirmed this principle, underscoring that, "under existing law, the [reviewing agency] must recognize and give due weight to the ALJ's unique position and ability to make demeanor-based judgments." Whasun Lee v. Bd. of Educ. of the Twp. of Holmdel, Docket No. A-5978-98T2 (App. Div. 2000), slip op. at 14. "When such a record, involving lay witnesses, can support more than one factual finding, it is the ALJ's credibility findings that control, unless they are arbitrary or not based on sufficient credible evidence in the record as a whole." Cavalieri v. Bd. of Tr. of Pub. Emp. Ret. Sys., 368 N.J. Super. 527, 537 (App. Div. 2004).

The ultimate determination of the agency and the ALJ's recommendations must be accompanied by basic findings of fact sufficient to support them. State, Dep't of Health v. Tegnazian, 194 N.J. Super. 435, 442-43 (App. Div. 1984). The purpose of such findings "is to enable a reviewing court to conduct an intelligent review of the administrative decision and determine if the facts upon which the order is grounded afford a reasonable basis therefor." Id. at 443. Additionally, the sufficiency of evidence "must take into account whatever in the record fairly detracts from its weight"; the test is not for the courts to read only one side of the case and, if they find any evidence there, the action is to be sustained and the record to the contrary is to be ignored (citation omitted). St. Vincent's Hosp. v. Finley, 154 N.J. Super. 24, 31 (App. Div. 1977).

In the matter currently before the Council, the ALJ's Initial Decision, set forth as "Exhibit B," determined that:

Based upon due consideration of the testimonial and documentary evidence presented at this hearing, and having had the opportunity to observe the demeanor of the witness and assess his credibility, I **FIND** the following as **FACTS**:

The PHA did not have the ability to disclose all responsive records electronically since they do not maintain all of their records electronically and do not have the staff or budget to electronically scan in all of their records.

The Custodian did not impose a special service charge for the production of records.

The Custodian waived all copying charges in producing the available records to [the Complainant] and did not charge a \$0.10 per page copy cost.

The PHA did not maintain 2013 work orders for [the Complainant's] father as requested in item [No.] 24 and therefore the Custodian could not locate or provide these documents.

The PHA did not maintain copies of proposals for professional service contracts for the years 2011 through 2014 as requested in item [No.] 27 and therefore, the Custodian could not locate or provide these documents.

The PHA did locate and produce copies of the professional services contracts for the years 2011 through 2014 for the auditor, architect and attorney as requested in item [No.] 28 after receiving clarification from [the Complainant] at the August 2018 settlement conference. No reproduction costs or service fees were charged to [the Complainant].

The PHA did not locate or produce invoices and purchase orders for 2012, 2013 and 2014 for all maintenance parts and supplies purchases as requested in item [No.] 29. The Custodian indicated that those documents were not available to be produced, since the PHA uses hundreds of suppliers and does not maintain one centralized file for all purchases in the administrative offices of the PHA and therefore could not produce these documents.

I further **FIND** as **FACT** that there has been no evidence presented to establish that the PHA, by and through its record Custodian, knowingly and willfully violated OPRA and unreasonably denied access to the requested documents.

...

Although the PHA did not locate or produce invoices and purchase orders for 2012, 2013 and 2014 for all maintenance parts and supplies purchases as requested in item [No.] 29, this request is in the nature of a blanket request for a class of various documents rather than a request for a specific government record as contemplated by OPRA. Therefore, the PHA has met its burden of proof that access to those documents sought in request [No.] 29 was not unlawfully denied.

Therefore, I **CONCLUDE** that the PHA did not knowingly and willfully violate OPRA and did not unreasonably deny access to the requested documents under the totality of the circumstances.

[Id. at 6-7, 9.]

Based on the foregoing, the ALJ “**ORDERED** that the GRC complaint against the PHA be **DISMISSED** with prejudice.” Id. at 10.

Here, the ALJ fairly summarized the testimony and evidence, explaining how she weighed the proofs before her and explaining why she credited certain testimony. The ALJ’s conclusions are aligned and consistent with those credibility determinations. As such, the GRC is satisfied that it can ascertain which testimony the ALJ accepted as fact, and further, finds that those facts provide a reasonable basis for the ALJ’s conclusions.

Therefore, the Council should accept the ALJ's Initial Decision concluding that the Custodian "did not knowingly and willfully violate OPRA." Further, the Council should accept the ALJ's order that this complaint be "**DISMISSED** with prejudice." Thus, no further adjudication is required.

In closing, the GRC is compelled to address two (2) issues that arose in the Initial Decision to alert the Custodian and PHA that their standardized policies may be inconsistent with OPRA.

First, in his OAL testimony, the Custodian testified that he understood from trainings that a record requested should be "produced in the format which it is maintained." Initial Decision at 3. OPRA addresses the medium issue as follows:

A custodian shall permit access to a government record and provide a copy thereof in the medium requested if the public agency maintains the record in that medium. If the public agency does not maintain the record in the medium requested, the custodian shall either convert the record to the medium requested or provide a copy in some other meaningful medium. If a request is for a record:

in a medium not routinely used by the agency;
not routinely developed or maintained by an agency; or
requiring a substantial amount of manipulation or programming of
information technology,

the agency may charge, in addition to the actual cost of duplication, a special charge that shall be reasonable and shall be based on the cost for any extensive use of information technology, or for the labor cost of personnel providing the service, that is actually incurred by the agency or attributable to the agency for the programming, clerical, and supervisory assistance required, or both.

[N.J.S.A. 47:1A-5(d).]

Further, the Council has previously held that a custodian's failure to address a complainant's preferred method of delivery results in an insufficient response and a violation of OPRA. See *e.g. Delbury v. Greystone Park Psychiatric Hosp. (Morris)*, GRC Complaint No. 2013-240 (April 2014).

Here, the ALJ held that the PHA did not have the ability to produce all records electronically based on significant PHA limitations. Notwithstanding, the GRC notes that the Custodian should remain cognizant of a requestor's preferred method of delivery going forward. Additionally, should the Custodian be unable to disclose records via said method, the Custodian must offer the records in "some other meaningful medium." N.J.S.A. 47:1A-5(d). The GRC also notes that the medium must be "meaningful" to the requestor. See Blaustein v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2011-109 (Interim Order dated July 31, 2012) at 10.

Complaint 2015-50

Exhibit A

Robert J. Chester, Esq.

1053 Bally Bunion Drive
Egg Harbor City, New Jersey 08215
rj3141@msn.com

(609) 601-5111 (Home)
(609) 335-6270 (Cell)
(609) 270-9480 (Fax)

Pennsylvania Attorney #312607

Licensed by the Supreme Court of the Commonwealth of Pennsylvania

Sunday, December 14, 2014

Pleasantville Housing Authority
Attn: Records Custodian
168 North Main Street
Pleasantville, New Jersey 08232
(609) 646-9317 (fax)
(609) 272-1405 (fax)

To Whom It May Concern,

I am writing to submit the attached records request pursuant to New Jersey's Open Public Records Act. Thank you for your kindness. Please do not hesitate in contacting me should you have any questions.

Respectfully,



Robert J. Chester, Esq.

Enc.

Oct. 9. 2013 10:17AM

No. 0700 2, 1

PLEASANTVILLE HOUSING AUTHORITY
OPEN PUBLIC RECORDS ACT REQUEST FORM

Records Custodian, Operations Manager
158 North Main Street
Pleasantville, NJ 08232
Or Submit via fax to (609) 648-9317 or (609) 272-1606

Important Notice

The pages of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information - Please Print

First Name Robert MI J Last Name Chester
 E-mail Address rj3141@MSN.COM
 Mailing Address 1053 Bally Bunion Drive
Off Egg Harbor City State NJ Zip 08215
 Telephone 609-335-6270 FAX 609-382-0009
 Preferred Delivery: Pick Up US Mail On-Site Fax E-mail PDF
 If you are requesting records containing personal information, please circle one: Under penalty of P.L.S.A. 2023-3, I swear that I HAVE / HAVE NOT been convicted of any indictable offense under the laws of New Jersey, any other state or the United States.
 Signature [Signature] Date 10/12/14/2014

Payment Information

Maximum Authorization Cost: \$ 25.00
 Select Payment Method
 Cash Check Money Order
 Fees: Actual costs to be determined by the agency
 Other materials - actual
 Delivery: Delivery / postage fees additional depending upon delivery type.
 Extras: Special service charge dependent upon request.
 Cash Cash in Person

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

Please See Attached

NOTE: As indicated above, records are requested in ELECTRONIC PDF FORM. I have already supplied a USB drive to put them on which I previously mailed to you. Under NJ's OPRA, there are no charges allowed for electronic records.

AGENCY USE ONLY

Est. Document Cost _____
 Est. Delivery Cost _____
 Est. Extra Cost _____
 Total Est. Cost _____
 Deposit Amount _____
 Estimated Balance _____
 Deposit Date _____

AGENCY USE ONLY

Disposition Status
 Customer: If any part of request cannot be delivered in seven business days, detail reasons here.
 In Progress _____ Open _____
 Denied _____ Closed _____
 Filed _____ Closed _____
 Partial _____ Closed _____

AGENCY USE ONLY

Tracking Information
 Tracking # _____ Total _____
 Rec'd Date _____ Deposit _____
 Ready Date _____ Balance Due _____
 Total Pages _____ Balance Paid _____
 Records Provided _____
 Customer Signature _____ Date _____

Pursuant to New Jersey's Open Public Record Act, I am requesting the following documents.

- (1) All documents related in any way related to resolutions proposed and or approved by the Board of Commissioners involving travel by any member of the Pleasantville Housing Authority since January 1, 2000, including but not limited to receipts, resolutions, motions, travel forms; and**
- (2) All minutes of all meetings of the PHA Board since January 1, 2000; and**
- (3) All reports submitted to the PHA Board since January 1, 2000; and**
- (4) All documents relating to any and all health and safety issues, with supporting documentation, that you and/or any member of the Pleasantville Housing Authority have been involved with in any way over the last 25 years; and**
- (5) All documents relating to the number of employees of the Pleasantville Housing Authority over the last 25 years; and**
- (6) All documents relating to the number of employees hired, for each their AA/EEO data (age, gender, color) over the last 25 years; and**
- (7) All documents relating to the number of employees fired, for each their AA/EEO data (age, gender, color), and the reasons terminated; and**
- (8) Copies of all newspaper and other media advertising open job positions; and**
- (9) Copies of all job application documents for all current employees; and**
- (10) Copies of all job application documents for all applicants to the current Maintenance Supervisor position; and**
- (11) All documents relating to the number of employees who retired, for each their AA/EEO data (age, gender, color) over the last 25 years; and**
- (12) All documents relating to the eviction of any and all tenants of the Pleasantville Housing Authority for the last four years. Please also include with this specific request any ulterior reasons that may have been a part of, including but not limited to hygiene issues. Please also include the name of anyone on the exclusion list that may be included; and**
- (13) All documents relating to all persons currently on the exclusion list, including why they are specifically on the exclusion list, and if they are related to any past or present member of the Pleasantville Housing Authority; and**

- (14) All documents relating to all disciplinary actions given to any employee of the Pleasantville Housing Authority over the last 25 years, with their age/color/gender included; and
- (15) All documents relating to the specific salaries and other compensation and reimbursements (including receipts) of all members of the Pleasantville Housing Authority for the last 25 years; and
- (16) All documents relating to and including work orders for apartments 808; and
- (17) All documents relating to and including work orders for all apartments and tenants with hot water issues since January 1, 2010; and
- (18) All documents relating to and including work orders for all apartments with sink drainage issues since January 1, 2010; and
- (19) All documents relating to and including training by employees by Mr. Joseph Culligan and all other supervisors since January 1, 1987; and
- (20) All documents relating to all OPRA requests and your written responses to these OPRA requests (excluding specific documents requested with each of these specific OPRA requests); and
- (21) A list of all approved travel by any member of the Pleasantville Housing Authority since January 1, 2000, including but not limited to receipts, resolutions, motions, travel forms; and
- (22) All contracts between the Pleasantville Housing Authority and the Executive Director for the last ten (10) years; and
- (23) The 'Parts Needed List' for the maintenance department which was there on October 18, 2013; and
- (24) All work orders handled by Robert M. Chester for calendar year 2013; and
- (25) All training records for Robert M. Chester; and
- (26) The employment application to the Pleasantville Housing Authority for the current Executive Director; and
- (27) The proposals submitted to the Pleasantville Housing Authority for all professional contracts for calendar years 2011, 2012, 2013 and 2014; and
- (28) Copies of all professional contracts entered into by the Pleasantville Housing Authority for calendar years 2011, 2012, 2013 and 2014; and
- (29) Invoices and Purchase Orders for 2012, 2013 and 2014 for all maintenance parts and supplies purchases; and

- (30) The current employee handbook, all amendments to the employee handbook, and all previous employee handbooks since 1986; and**
- (31) All documents relating to the placement of Robert M. Chester on the PHA Exclusion list; and**
- (32) All documents involving Work Orders for the following Apartments since January 1, 2011:**
 - a. 140 Building Apartment 910**
 - b. 156 Building Apartment A101**
 - c. 156 Building Apartment A209**
 - d. 140 Building Apartment 808**

I am requesting no paper copies, but rather in PDF form emailed to rj3141@msn.com. If it is too large of a file for email, then please put it on the red 16 GB USB drive I mailed to you so I may pick it up in person.

I am also strongly requesting that my request be fulfilled within the statutory seven day time frame. I do not agree to any extensions under any circumstances.

Complaint 2015-50
Exhibit B



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. GRC 17476-17

AGENCY DKT. NO. 2015-50

ROBERT J. CHESTER,

Petitioner,

v.

PLEASANTVILLE HOUSING AUTHORITY (ATLANTIC),

Respondent.

Robert J. Chester, petitioner, pro se

Karen A. Murray, Esq., for respondent

Record Closed: April 1, 2019

Decided: May 9, 2019

BEFORE **CATHERINE A. TUOHY**, ALJ:

STATEMENT OF THE CASE

Petitioner, Robert J. Chester, filed a denial of access complaint against the respondent, the Pleasantville Housing Authority (PHA), pursuant to N.J.S.A. 47:1A-1 et seq., the New Jersey Open Public Records Act (OPRA). At issue is whether respondent knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

PROCEDURAL HISTORY

On March 3, 2015, petitioner filed a denial of access complaint with the Government Records Council (GRC). During its meeting on September 26, 2017, the GRC found that the complaint should be referred to the Office of Administrative Law (OAL) for a fact-finding hearing to determine: 1) the PHA's ability to disclose all responsive records electronically; 2) whether the Custodian lawfully proposed a special service charge (for all records); 3) whether the Custodian lawfully implemented a \$0.10 per page copy cost in lieu of providing records electronically; and 4) whether the Custodian should have located and provided those records sought in requested items Nos. 24, 27, 28 and 29. The GRC transmitted the complaint to the OAL, where it was filed on November 28, 2017 as a contested case pursuant to N.J.S.A. 52:14B-1 to 15; N.J.S.A. 52: 14F-1 to 13. A hearing was held on January 24, 2019, and the record closed on March 15, 2019 following the filing of written summations.

FACTUAL DISCUSSIONS AND FINDINGS

Dave Caracciolo testified on behalf of the respondent. Mr. Caracciolo is currently employed by the Pleasantville Housing Authority (PHA) and has been since 2004. He is currently the director of operations and has been the record custodian since 2012. He started his employment with the housing authority as the housing choice voucher program coordinator and was promoted to operations manager then director of operations. He has a college degree in business administration from Howard University and holds several housing certificates.

Mr. Caracciolo's duties as director of operations for the PHA include overseeing all of the housing authorities' programs and management of the day to day operations including the hiring and reprimand of staff. He is second in command to the Executive Director of the Housing Authority, Vernon Lawrence. As the records custodian for the PHA, he handles all of the OPRA requests. He facilitates the compilation of all of the records and assigns whatever staff is necessary to assist with locating the records and making copies. He verifies that the records are correct prior to producing them. Mr.

Caracciolo estimated that he has been at the PHA almost fifteen years and although recently they have received OPRA requests they had not received many in the past.

Mr. Caracciolo has handled all of the OPRA requests made by Mr. Chester. Prior to their meeting with Mr. Chester in August 2018 to resolve this matter, Mr. Caracciolo had met Mr. Chester at a housing authority dinner Mr. Chester attended with his father, a former PHA employee. Mr. Caracciolo has attended two to three training seminars regarding handling OPRA requests. It is his understanding from the training he received is that the information requested is produced in the format in which it is maintained. In general, when they receive an OPRA request they would produce the document in the format in which they maintain the document which is usually paper. If they have an electronic copy they will provide it electronically. The Pleasantville Housing Authority board meets once a month and paper minutes are kept of the meeting. They have recently started scanning the paper minutes electronically and can produce Board minutes electronically at the current time. The Board minutes are available on the PHA's website.

Mr. Caracciolo works in the administration building with three people including himself, the executive director and the staff accountant. The PHA oversees several hundred housing units and has twelve employees, ten of which are full-time and two of which are part-time. The other employees work in the senior development building next to the administration building and off-site at the section 8 voucher program locations. The PHA has a maintenance supervisor and one maintenance person. Mr. Caracciolo does not have a secretary.

On December 14, 2014 Mr. Chester sent a letter to the record custodian of the PHA making an OPRA request for thirty-two items (R-1). When Mr. Caracciolo received the OPRA request he discussed it with the executive director, Mr. Lawrence. Legal questions were referred to the PHA's attorney, Karen Murray. The Pleasantville Housing Authority had received eight prior OPRA requests from Mr. Chester and sent him a letter dated December 22, 2014 directing Mr. Chester to the Housing Authority's previous responses to his requests (R-2). Mr. Caracciolo authored the December 22, 2014 letter which requested that Mr. Chester review his previous requests because the

information was repetitive. The PHA had asked for clarification of what was being sought and Mr. Chester never responded to the PHA requests. Mr. Caracciolo's letter also stated that Mr. Chester was attempting to intimidate and threaten staff and was being abusive and using harassing tactics. Mr. Caracciolo explained the reason that he wrote that was that they are a small, very busy office, that never had many OPRA requests and that all of a sudden, they were receiving several from the same person asking for the same information and who never replied back when the PHA sought clarification as to what was being requested. This was Mr. Chester's eighth OPRA request and the PHA had responded to all of his previous requests.

In response to the December 14, 2014 request, the PHA prepared a list of prior OPRA requests made by Mr. Chester that were previously responded to by the Housing Authority on September 13 and October 8, 2014 (R-3). The PHA requested clarifications regarding some of the requests made by Mr. Chester, however Mr. Chester never responded. The Housing Authority also indicated it would be charging Mr. Chester \$0.10 per page to reproduce the copies and Mr. Chester did not respond as to whether he would pay this amount or whether he still wanted the copies. Mr. Chester never made a request to come in to review the documents in lieu of having them copied. The PHA's standard practice was to charge \$0.10 per page copying fee and never had anyone object to same. The PHA never sent Mr. Chester a letter requesting a special service charge. There can be a special service charged but they never assessed Mr. Chester with a special charge.

Item #2 requested Board minutes which the PHA requested a copying charge for but never refused to provide. OPRA request #22 was for copies of the Executive Director contracts for ten years. The PHA did not refuse to provide same, but only advised Mr. Chester of the reproduction costs. OPRA request item #28 sought professional contracts from 2011 through 2014 however did not specify what particular contracts Mr. Chester was seeking. It was not until the August 2018 settlement meeting between Mr. Chester and the PHA did Mr. Chester specify that he was seeking professional services contracts. At that meeting, he advised that he specifically wanted four years of attorney, architect and auditors' contracts. The PHA then produced the professional services contracts they maintain for their attorney, auditor and architect.

The PHA also produced copies of the employee handbooks. The PHA never refused to provide the documents but only assessed the costs to copy the documents. The PHA initially advised Mr. Chester that they were assessing \$0.10 a page and were seeking a total of \$64 to cover the cost of reproducing the documents. The PHA agreed to waive the copying charges and did not charge Mr. Chester any copying charges or service fees associated with the time and cost to reproduce the records.

The PHA did not have some of the items requested by Mr. Chester including: his father's work orders from 2013; his father's training records; travel resolutions and forms; professional services proposals; parts needed lists from the maintenance department; and invoices and purchase orders for parts and supplies. The PHA advised Mr. Chester in writing and again at the August 2018 meeting that these items are not maintained by the PHA and they do not have them to produce. Mr. Chester had also requested that his father's personnel file be produced. The Authority agreed to reproduce same if Mr. Chester provided them with an authorization from his father allowing them to provide it to him.

Ms. Murray requested Mr. Caracciolo to provide her with the names of the individuals involved in compiling the documents responsive to petitioner's OPRA request and the amount of time expended to do so. It took the PHA fourteen and a half hours to compile its responses to Mr. Chester's OPRA request and involved the part-time receptionist, staff accountant, housing manager, director of operations and the Executive Director (R-4). No service fee was assessed to Mr. Chester.

On cross-examination, Mr. Caracciolo stated that they did not receive many OPRA requests. He never requested a secretary or more staff to assist him even though the PHA was so busy. When the PHA receives an invoice, they file it in the particular vendor's file. The PHA owns three scanners only one of which is in his office. They can physically scan a document to a PDF. Mr. Chester indicated that they technically have the ability to scan in all of their records. Mr. Caracciolo indicated that most of their records are not maintained electronically. If they receive a document such as a state audit in electronic format they are capable of reproducing that document in the same format. However, they have not physically scanned all of their records

because they do not have the time and support staff to do so. Mr. Chester inquired as to whether the PHA could hire a secretary to do so. Mr. Caracciolo explained that the PHA is overseen by HUD and has a limited budget within which they are operating. Mr. Chester asked Mr. Caracciolo if he was aware that the regulations only allow \$0.05 per page copying charge and \$0.07 for legal size copies. Mr. Caracciolo does not recall being given any specific instruction on the amount allowed to be charged.

On re-direct, Mr. Caracciolo stated that the PHA uses hundreds of suppliers. The PHA does not maintain one centralized file on all purchases. The PHA has always charged \$0.10 copying charge per page.

OPRA request #24 sought 2013 work orders handled by Mr. Chester's father which were not maintained by the PHA and therefore not produced. OPRA request #27 sought contract proposals for four years, which were not kept by the PHA and therefore, not produced. OPRA request #28 sought professional service contracts for four years. Mr. Chester clarified that he was seeking the professional service contracts for the auditor, architect and the attorney at the August 18, 2018 meeting and thereafter, the PHA copied and produced the professional service contracts requested for the auditor, architect and the attorney. OPRA request #29 sought three years of parts and supply invoices which were not produced because those documents were not available since they were not maintained in a central file in the administrative offices by the PHA and could not be produced.

The following copies of documents were produced without any copying or service charges: the Board minutes for fourteen years; the Executive Director contracts; the employee handbooks; the professional service contracts for the architect, auditor and attorney; and the PHA records retention policy required by HUD.

No witnesses were produced by Mr. Chester nor did he testify on his own behalf.

Based upon due consideration of the testimonial and documentary evidence presented at this hearing, and having had the opportunity to observe the demeanor of the witness and assess his credibility, I **FIND** the following as **FACTS**:

The PHA did not have the ability to disclose all responsive records electronically since they do not maintain all of their records electronically and do not have the staff or budget to electronically scan in all of their records.

The Custodian did not impose a special service charge for the production of records.

The Custodian waived all copying charges in producing the available records to Mr. Chester and did not charge a \$0.10 per page copy cost.

The PHA did not maintain 2013 work orders for Mr. Chester's father as requested in item #24 and therefore the Custodian could not locate or provide these documents.

The PHA did not maintain copies of proposals for professional service contracts for the years 2011 through 2014 as requested in item #27 and therefore, the Custodian could not locate or provide these documents.

The PHA did locate and produce copies of the professional services contracts for the years 2011 through 2014 for the auditor, architect and attorney as requested in item #28 after receiving clarification from Mr. Chester at the August 2018 settlement conference. No reproduction costs or service fees were charged to Mr. Chester.

The PHA did not locate or produce invoices and purchase orders for 2012, 2013 and 2014 for all maintenance parts and supplies purchases as requested in item #29. The Custodian indicated that those documents were not available to be produced, since the PHA uses hundreds of suppliers and does not maintain one centralized file for all purchases in the administrative offices of the PHA and therefore could not produce these documents.

I further **FIND** as **FACT** that there has been no evidence presented to establish that the PHA, by and through its record Custodian, knowingly and willfully violated OPRA and unreasonably denied access to the requested documents.

LEGAL DISCUSSION AND ANALYSIS

The Open Public Records Act, N.J.S.A. 47:1A-1 et seq., known as “OPRA,” declares the public policy of the State of New Jersey to be that government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions. N.J.S.A. 47:1A-5 requires that the custodian shall indicate the specific basis upon which he is unable to comply.

A government record is defined 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

[N.J.S.A. 47:1A-1.1.]

The Agency must establish that the denial of access is authorized by law. N.J.S.A. 47:1A-6.

OPRA, however, “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.’” MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) (quoting N.J.S.A. 47:1A-1). Thus, agencies must disclose only “‘identifiable’ governmental records not otherwise exempt,” and “[w]holesale requests for general information to be analyzed, collated and compiled by the responding government entity are not encompassed therein. In short, OPRA does not countenance open-ended searches of an agency’s files.” Id. at 549. Indeed, the document requested must be specifically described and reasonably identified. A request for general data, information or statistics will not suffice. See Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005). Moreover, the custodian is not required to conduct research or correlate data. Ibid.

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. OPRA does not authorize unbridled searches of an agency's property. In fact, if a request "would substantially disrupt agency operations, the custodian may deny . . . [it and] . . . attempt to reach a reasonable solution . . . that accommodates the interests of the requestor and the agency."

[Ibid. (quoting N.J.S.A. 47:1A-5(g)).]

A request that fails to specifically identify the documents sought is not "encompassed" by OPRA and OPRA's deadlines do not apply." N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 179 (App. Div. 2007). For example, in Morgano v. Essex County Prosecutor's Office, GRC Complaint No. 2007-156 (February 2008), <http://www.state.nj.us/grc/decisions/pdf/2007-156.pdf>, the GRC determined that a request for two prosecutor's office files was overbroad and "of the nature of a blanket request for a class of various documents rather than a request for a specific government record," so the custodian met the burden of proof that access to the records was not unlawfully denied.

Although the PHA did not locate or produce invoices and purchase orders for 2012, 2013 and 2014 for all maintenance parts and supplies purchases as requested in item #29, this request is in the nature of a blanket request for a class of various documents rather than a request for a specific government record as contemplated by OPRA. Therefore, the PHA has met its burden of proof that access to those documents sought in request #29 was not unlawfully denied.

Therefore, I **CONCLUDE** that the PHA did not knowingly and willfully violate OPRA and did not unreasonably deny access to the requested documents under the totality of the circumstances.

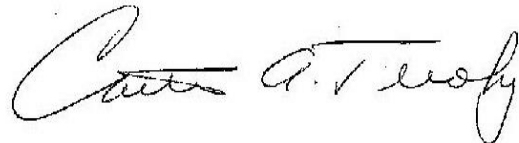
ORDER

It is **ORDERED** that the GRC complaint against the PHA be **DISMISSED** with prejudice.

I hereby **FILE** my initial decision with the **GOVERNMENT RECORDS COUNCIL** for consideration.

This recommended decision may be adopted, modified or rejected by the **GOVERNMENT RECORDS COUNCIL**, who by law is authorized to make a final decision in this matter. If the Government Records Council does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **EXECUTIVE DIRECTOR OF THE GOVERNMENT RECORDS COUNCIL, 101 South Broad Street, PO Box 819, Trenton, New Jersey 08625-0819**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



May 9, 2019

DATE

CATHERINE A. TUOHY, ALJ

Date Received at Agency:

May 9, 2019 (emailed)

Date Mailed to Parties:

/mel

APPENDIX

WITNESSES

For Petitioner:

None

For Respondent:

Dave Caracciolo, Director of Operations/Custodian of Records for the Pleasantville Housing Authority

EXHIBITS

For Petitioner:

None

For Respondent:

- R-1 December 14, 2014 letter from petitioner to the respondent enclosing OPRA request (five pages)
- R-2 December 22, 2014 letter from Dave Caracciolo to petitioner
- R-3 Pleasantville Housing Authority list itemizing the thirty-two items contained in the December 14, 2014 OPRA and indicating prior OPRA requests from petitioner for the same items from prior OPRA requests of September 24, 2013, September 30, 2013, October 8, 2013, October 9, 2013 and October 28, 2013 (two pages)
- R-4 Email from Dave Caracciolo to Ms. Murray regarding 710 copies compiled as a result of August 2018 meeting between respondent and petitioner