



**Minutes of the Government Records Council  
June 29, 2010 Public Meeting – Open Session**

The meeting was called to order at 9:45 a.m. at the Department of Community Affairs, Conference Room 126, Trenton, New Jersey. The Open Public Meetings Act statement was read.

The pledge of allegiance was recited while standing by all.

The meeting notice and fire emergency procedure was read by Ms. Tabakin.

Ms. Hairston called the roll:

Present: Robin Berg Tabakin, Chairwoman, Charles Richman (designee of Department of Community Affairs Commissioner Lori Grifa), Stacy Spera (designee of the Department of Community Affairs Commissioner Lori Grifa for the sole purpose of adjudication Neil Yoskin v. NJ Department of Environmental Protection, 2009-117 and Faith Sarafin (designee of Department of Education Commissioner Bret Schundler).

GRC Staff In Attendance: Executive Director Catherine Starghill, In-House Counsel Karyn Gordon, GRC Secretary Brigitte Hairston, Case Managers: Dara Lownie, Frank Caruso, John Stewart, Designated Outside Counsel Gina Orozo and Deputy Attorney General Debra Allen.

Ms. Tabakin read the Resolution for Closed Session to go into closed session pursuant to N.J.S.A. 10:4-12.b(7) to receive legal advice and discuss anticipated litigation in which the public body may become a party in the following matters:

1. John Paff v. City of Gloucester (Camden) (2009-102) (***In-Camera Review***)
2. Neil Yoskin v. NJ Department of Environmental Protection (2009-117) (***In-Camera Review***)

A motion was made to go into closed session by Mr. Richman and seconded by Ms. Sarafin to go into closed session. The motion was adopted by a unanimous vote. A motion was made by Ms. Spera and seconded by Ms. Sarafin to end the closed session. The motion was adopted by a unanimous vote. The Council met in closed session from 9:50 a.m. until 9:55 a.m.

Open Session reconvened at 9:56 a.m. and Ms. Hairston called roll.

Present: Ms. Tabakin, Mr. Richman, Ms. Spera and Ms. Sarafin.

No vote could be taken on the approval of the May 27, 2010 meeting minutes because Ms. Auerswald (designee of Department of Education Commissioner Bret Schundler at the May 27, 2010 meeting) was not in attendance.

**Council Adjudication:**

The following complaints were presented to the Council for summary administrative adjudication:

1. Michael Paitchell v. Clifton Board of Education (Passaic) (2009-127)
2. Luis Perez v. Borough of Glassboro (Gloucester) (2009-199)
3. B. Connor Hamilton v. Township of Springfield (Union) (2009-146)
4. Luis Perez v. Borough of Glassboro (Gloucester) (2009-200)
5. Wayne Robbins v. NJ Department of Corrections (2009-202)
6. John Plain v. Millburn Police Department (Essex) (2010-54)
7. Kenneth Vercammen v. Township of Hamilton, Police Department (Mercer) (2010-62)
8. Richard Rivera v. Borough of Fort Lee (Bergen) (2010-78)
9. John Ryan, Jr. v. Sussex County Prosecutor's Office (2010-93)
10. William King v. NJ Department of Law & Public Safety, State Athletic Control Board (2010-113)

Ms. Tabakin called for a motion to accept the Executive Director's recommendations as written in all of the above Administrative Complaint Dispositions. A motion was made by Mr. Richman and seconded by Ms. Sarafin. The motion passed unanimously.

The following complaints requiring individual adjudication were not put to a vote due to the lack of quorum:

1. James D'Andrea v. NJ Department of Community Affairs, Division of Local Government Services (2007-64)
2. William Gettler v. Wantage Regional Schools, Board of Education (Sussex) (2007-105)
3. Joyce Blay v. Jackson Board of Education (Ocean) (2007-177)
4. John Paff v. Borough of Lavallette (Ocean) (2007-209)
5. David Hinchcliffe v. NJ Department of Community Affairs, Division of Local Government Services (2007-306)
6. John Bentz v. Borough of Paramus (Bergen) (2008-89)
7. J.C. v. NJ Department of Education, Deputy Commissioner's Office (2008-91)
8. Robert Verry v. Borough of South Bound Brook (Somerset) (2008-161)
9. Gertrude Casselle v. NJ Department of Community Affairs, Division on Community Resources (2008-248)
10. Ursula Cargill v. NJ Department of Education (2009-9)
11. Ursula Cargill v. State Ethics Commission (2009-10)
12. Jason Alt v. NJ Department of Education (2009-114)
13. Joseph Armenti v. Robbinsville Board of Education (Mercer) (2009-154)

**Neil Yoskin v. NJ Department of Environmental Protection (2009-117)**

Ms. Starghill reviewed the GRC's analysis and issues in the case as set forth in the *In Camera* Findings and Recommendations of the Executive Director. Ms. Starghill presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. The Custodian has complied with the Council's April 8, 2010 Interim Order by providing the Council with all records set forth in Paragraph 6 of the Order within five (5) business days of receiving the Council's Order.
2. The *In Camera* Examination set forth in the table below reveals the Custodian has lawfully denied access to the record listed in the document index pursuant to N.J.S.A. 47:1A-6.
3. Although the Custodian's failure to respond in writing to the Complainant's February 20, 2009 OPRA request resulted in a deemed denial 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 (October 2007), the Custodian did timely comply with the Council's April 8, 2010 Interim Order and the *in camera* review revealed that the Custodian lawfully denied access to the Highlands Council Applicability Determination Review and Checklist and Comments to the New Jersey Department of Environmental Protection dated May 5, 2008 because that record is exempt from disclosure as advisory, consultative or deliberative material pursuant to N.J.S.A. 47:1A-1.1. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Record Number	Record Name/Date	Description of Record	Custodian's Explanation/ Citation for Non-disclosure	Findings of the <i>In Camera</i> Examination <sup>1</sup>
28	Highlands Council	Record consists of	Record exempt from disclosure	The record is exempt from

<sup>1</sup> **Unless expressly identified for redaction, everything in the record shall be disclosed.** For purposes of identifying redactions, unless otherwise noted a paragraph/new paragraph begins whenever there is an indentation and/or a skipped space(s). The paragraphs are to be counted starting with the first whole paragraph in each record and continuing sequentially through the end of the record. If a record is subdivided with topic headings, renumbering of paragraphs will commence under each new topic heading. Sentences are to be counted in sequential order throughout each paragraph in each record. Each new paragraph will begin with a new sentence number. If only a portion of a sentence is to be redacted, the word in the sentence which the redaction follows or precedes, as the case may be, will be identified and set off in quotation marks. If there is any question as to the location and/or extent of the redaction, the GRC should be contacted for clarification before the record is redacted. The GRC recommends the redactor make a paper copy of the original record and manually "black out" the information on the copy with a dark colored marker, then provide a copy of the blacked-out record to the requester.

	<p>Applicability Determination Review and Checklist and Comments to NJ DEP dated May 5, 2008</p>	<p>recommendations made by Highlands Council staff to DEP staff regarding a Highlands exemption application (4 pages).</p>	<p>as an inter-agency deliberative record pursuant to <u>N.J.S.A. 47:1A-1.1</u></p>	<p>disclosure as advisory, consultative or deliberative material pursuant to N.J.S.A. 47:1A-1.1. Specifically, the record contains recommendations and opinions of Highlands Council staff regarding whether the applicant should be granted a Highlands exemption. The record is used in the deliberative process which culminates in a summary of findings that outlines additional information required of the applicant, as well as things to be considered by DEP staff before a determination as to whether a Highlands exemption may be granted.</p>
--	--	--	---	---

Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. A motion was made by Ms. Spera and seconded by Mr. Sarafin. The motion passed unanimously.

**Ronald Pittore v. University of Medicine & Dentistry of NJ (2007-216)**

Ms. Lownie reviewed the GRC’s analysis and issues in the case as set forth in the Supplemental Findings and Recommendations of the Executive Director. Ms. Lownie presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council accepts the Administrative Law Judge’s Initial Decision dated May 21, 2010 in which the Judge approved the Stipulation of Dismissal signed by the parties or their representatives.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Mr. Richman and seconded by Ms. Sarafin. The motion passed unanimously.

**Richard Rivera v. Borough of Keansburg (Monmouth) (2007-222)**

Mr. Stewart reviewed the GRC's analysis and issues in the case as set forth in the Supplemental Findings and Recommendations of the Executive Director. Mr. Stewart presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council accepts the Administrative Law Judge's Initial Decision dated June 11, 2010 in which the Judge granted a summary decision in favor of the Custodian and Ordered that the complaint be dismissed.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Mr. Richman and seconded by Ms. Sarafin. The motion passed unanimously.

**Z.T. v. Bernards Township Board of Education (Somerset) (2007-277)**

Ms. Lownie reviewed the GRC's analysis and issues in the case as set forth in the *Reconsideration* Supplemental Findings and Recommendations of the Executive Director. Ms. Lownie presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. Because the Complainant has failed to establish in his motion for reconsideration of the Council's April 8, 2010 Interim Order that 1) the GRC's decision is based upon a "palpably incorrect or irrational basis" or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence, said motion for reconsideration is denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).
2. Because the former Custodian provided payment of the \$1,000 civil penalty to the GRC within the extended deadline date, and because the current Custodian provided a legal certification to the GRC certifying that there are no records responsive to the second portion of request item no. 4 (Report of Misconduct) or the entirety of request item no. 5, within the extended deadline date, both the former Custodian and current Custodian have complied with the Council's April 8, 2010 Interim Order.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Sarafin and seconded by Mr. Richman. The motion passed unanimously.

**Kreszentia Teena Morris v. Borough of Victory Gardens (Morris) (2008-137)**

Mr. Caruso reviewed the GRC's analysis and issues in the case as set forth in the *Reconsideration* Supplemental Findings and Recommendations of the Executive Director. Mr. Caruso presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that because the Custodian's Counsel has failed to establish in his motion for reconsideration of the Council's April 28, 2010 Interim Order that 1) the GRC's decision is based upon a "palpably incorrect or irrational basis" or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence, and has failed to show that the GRC acted arbitrarily, capriciously or unreasonably in disposing administratively of the complaint, said motion for reconsideration is denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003). Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees pursuant to the Council's April 28, 2010 Interim Order.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Sarafin and seconded by Mr. Richman. The motion passed unanimously.

**Richard Rivera v. Wall Township Police Department (Monmouth) (2008-280)**

Mr. Stewart reviewed the GRC's analysis and issues in the case as set forth in the Supplemental Findings and Recommendations of the Executive Director. Mr. Stewart presented the following recommendations to the Council with amendments:

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian certified on January 5, 2009 that no records relevant to the complaint were destroyed, and because the Custodian subsequently certified on April 26, 2010 that he is unable to locate the mobile video recorder media ordered by the Council for *in camera* examination, said certifications being made at all times during the pendency of this complaint, the Custodian violated N.J.S.A. 47:1A-7.c. and failed to comply with the terms of the Council's April 8, 2010 Interim Order.
2. Because the Custodian failed to safeguard existing records from destruction, he could not deliver to the GRC the mobile video recorder media for an *in camera* examination within the time period provided by the Council's April 8, 2010 Interim Order, as extended, and thereby denied the Complainant any opportunity for access to the requested records. Thus, it is possible that the Custodian's actions were intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional.
3. Because the Custodian failed to comply with the terms of the Council's Interim Order dated April 8, 2010, by not delivering the requested mobile video recorder media to the GRC for an *in camera* examination within the time provided for such compliance,

as extended, the Council could not make a determination as to whether access was or was not improperly denied; therefore, pursuant to the analyses and decisions in Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006) and Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), the Council cannot deliver a finding that the Complainant is a prevailing party entitled to an award of reasonable attorney's fees.

4. In view of the Custodian's actions, a fact finder could conclude that the Complainant was the victim of dilatory, obdurate or vexatious conduct by the Custodian during the pendency of the complaint directly resulting in the Council's inability to make a determination as to whether access was or was not improperly denied and prevailing party attorney fees should be awarded.
5. This complaint should be referred to the Office of Administrative Law for a determination of whether the Custodian's actions amount to a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances and, if so, whether the Complainant is entitled to prevailing party attorney fees and the reasonable amount thereof.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Mr. Richman and seconded by Ms. Auerswald. The motion passed unanimously.

**Jesse Wolosky v. County of Sussex (2009-26)**

Ms. Gordon reviewed the GRC's analysis and issues in the case as set forth in the Supplemental Findings and Recommendations of the Executive Director. Ms. Gordon presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian amended the Board of Freeholders' OPRA request form as required by the Council's February 23, 2010 Interim Order, and because the Custodian did so and provided certified confirmation of compliance to the Executive Director within five (5) business days of the issuance of said Interim Order, the Custodian has complied with the Council's February 23, 2010 Interim Order.
2. The Custodian has failed to establish that the GRC's decision that "[b]ecause the Board of Chosen Freeholders approved the November 25, 2008 executive session minutes on December 17, 2008, said minutes no longer constituted advisory, consultative or deliberative (ACD) material at the time of the Complainant's request and were therefore disclosable pursuant to N.J.S.A. 47:1A-1.1. and Wolosky v. Vernon Township Board of Education, GRC Complainant No. 2009-57 (December 2009). Accordingly, the Custodian has failed to bear her burden of proving a lawful denial of access to the requested executive session meeting minutes pursuant to N.J.S.A. 47:1A-6[.]" was 1) based upon a "palpably incorrect or irrational basis" or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence. *See* Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996).

3. The Custodian has failed to establish that the GRC's decision that "the Custodian shall amend the Board of Freeholder's official OPRA request form to include the remainder of the applicable provisions of OPRA" was 1) based upon a "palpably incorrect or irrational basis" or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence. *See Cummings v. Bahr*, 295 N.J. Super. 374 (App. Div. 1996).
4. Although the Custodian failed to bear her burden of proving a lawful denial of access to the requested executive session meeting minutes, she provided the Complainant with a copy of said records on January 15, 2009 and complied with the Council's February 23, 2010 Interim Order on the second (2<sup>nd</sup>) business day following the issuance of said Order. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
5. Pursuant to *Teeters v. DYFS*, 387 N.J. Super. 423 (App. Div. 2006), and the Council's February 23, 2010 Interim Order, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432. Additionally, pursuant to *Mason v. City of Hoboken and City Clerk of the City of Hoboken*, 196 N.J. 51 (2008), a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, *Teeters, supra*, and *Mason, supra*. Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Mr. Richman and seconded by Ms. Sarafin. The motion passed unanimously.

**James Sage v. County of Monmouth, Board of Chosen Freeholders (2009-43)**

Mr. Caruso reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Mr. Caruso presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that because the Complainant's request would require the Custodian to conduct research in order to respond to the request, the Complainant's request is invalid under OPRA. *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); *New Jersey Builders' Ass'n v. New Jersey Council on Affordable Housing*, 390 N.J. Super. 166, 177 (App. Div. 2007).

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as amended. A motion was made by Ms. Sarafin and seconded by Mr. Richman. The motion passed unanimously.



**John Paff v. Borough of Wildwood Crest (Cape May) (2009-54)**

Ms. Lownie reviewed the GRC's analysis and issues in the case as set forth in the Supplemental Findings and Recommendations of the Executive Director. Ms. Lownie presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. The Custodian has complied with the Council's Interim Order dated April 8, 2010 because the Custodian notified the Complainant of the actual cost to provide the requested audio cassette within three (3) business days of receipt of said Order, disclosed to the Complainant, upon receipt of the Complainant's payment of the actual cost, the requested audio cassette within ten (10) business days of receipt of said Order, and the Custodian provided a certification within five (5) business days from receipt of said Order that the Borough adopted the GRC's Model Request Form on March 5, 2010. However, the Custodian has not complied with the portion of the Council's Order that directed him to provide certified confirmation that he disclosed the audio cassette to the Complainant.
2. The Custodian violated N.J.S.A. 47:1A-5.b. by failing to charge the actual cost of the requested audio cassette and incorrectly assessed a special service charge pursuant to N.J.S.A. 47:1A-5.c. Additionally, the Borough's requirement that requestors who submit OPRA requests via mail must submit photo identification prior to receiving records presents an obstacle to public access of government records pursuant to N.J.S.A. 47:1A-1. Further, the Borough's OPRA request form contained misinformation regarding the accessibility of government records. However, the Custodian mostly complied with the Council's Interim Order dated April 8, 2010 by providing the Complainant with the requested audio cassette at actual cost and adopting the GRC's Model Request Form. Moreover, there is no evidence in the record that suggests the Custodian's violations of OPRA were intentional or deliberate. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
3. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), and the Council's April 8, 2010 Interim Order, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432. Specifically, the Custodian disclosed the requested audio cassette at actual cost and adopted the GRC's Model Request Form. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. The Custodian provided the cassette at actual cost pursuant to the Council's Interim Order and adopted the GRC's Model Request Form after the filing of this Denial of Access Complaint. Further, the relief ultimately achieved had a basis in law. N.J.S.A. 47:1A-5.b. provides that custodians must charge the actual cost of duplication which includes only the cost of materials and supplies. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters, *supra*, and Mason, *supra*. Thus, this

complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Sarafin and seconded by Mr. Richman. The motion passed unanimously.

**John Paff v. Gloucester City (Camden) (2009-102)**

Ms. Starghill reviewed the GRC's analysis and issues in the case as set forth in the *In Camera* Findings and Recommendations of the Executive Director. Ms. Starghill presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. The Custodian has complied with the Council's April 8, 2010 Interim Order by providing the Council with all records set forth in Paragraphs 3 and 5 of the Order within five (5) business days of receiving the Council's Order.
2. The *In Camera* Examination set forth in the table below reveals the Custodian has lawfully denied access to the records listed in the document index pursuant to N.J.S.A. 47:1A-6.
3. Although the original Custodian unlawfully charged the Complainant \$7.50 to scan and e-mail records in violation of N.J.S.A. 47:1A-5.b. because said fee does not reflect actual cost of providing the copies, which is likely zero, and the agency's OPRA request form did not comply with N.J.S.A. 47:1A-5.f. at the time of the Complainant's request, the current Custodian did comply with the April 8, 2010 Interim Order by providing the requested executive session minutes for an *in camera* examination and disclosed the requested e-mails to the Complainant. Further, the original Custodian lawfully redacted the requested executive session minutes of August 4, 2008 and August 21, 2008 because the redacted information is exempt as information generated by or on behalf of public employers or public employees in connection with collective negotiations, including documents and statements of strategy or negotiating position pursuant to OPRA (N.J.S.A. 47:1A-1.1.), contract negotiations pursuant to the Open Public Meetings Act (N.J.S.A. 10:4-12 and N.J.S.A. 47:1A-9.a.), and pending or anticipated litigation under the Open Public Meetings Act (N.J.S.A. 10:4-12) which is exempt under OPRA pursuant to N.J.S.A. 47:1A-9.a. The current Custodian also certifies that there were no redactions made to the September 2, 2008 executive session minutes. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
4. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), and the Council's April 8, 2010 Interim Order, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432. Specifically, the Complainant is not required to pay the Custodian's \$7.50 copy charge and Councilmen Marchese and Ferry disclosed the requested e-mails. Additionally, pursuant to Mason v. City of Hoboken and City

Clerk of the City of Hoboken, 196 N.J. 51 (2008), a factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney’s fee pursuant to N.J.S.A. 47:1A-6, Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), and Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008). Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney’s fees.

<b>Record or Redaction Number</b>	<b>Record Name/Date</b>	<b>Description of Redaction</b>	<b>Custodian’s Explanation/ Citation for Non-disclosure or Redactions</b>	<b>Findings of the <i>In Camera</i> Examination<sup>2</sup></b>
1.	Executive Session Minutes of August 4, 2008	<u>Redaction 1</u> – Under section entitled “Mayor questioned CWA”, first (1 <sup>st</sup> ) paragraph.	Redactions are exempt as contractual discussions regarding negotiations with the City’s unions and employment negotiations with the Chief of Police and Deputy Chief of Police pursuant to <u>N.J.S.A. 47:1A-1.1</u> .	This redaction is lawful since this part of the executive session discussion is exempt as information generated by or on behalf of public employers or public employees in connection with collective negotiations, including documents and statements of strategy or negotiating position pursuant to OPRA

<sup>2</sup> **Unless expressly identified for redaction, everything in the record shall be disclosed.** For purposes of identifying redactions, unless otherwise noted a paragraph/new paragraph begins whenever there is an indentation and/or a skipped space(s). The paragraphs are to be counted starting with the first whole paragraph in each record and continuing sequentially through the end of the record. If a record is subdivided with topic headings, renumbering of paragraphs will commence under each new topic heading. Sentences are to be counted in sequential order throughout each paragraph in each record. Each new paragraph will begin with a new sentence number. If only a portion of a sentence is to be redacted, the word in the sentence which the redaction follows or precedes, as the case may be, will be identified and set off in quotation marks. If there is any question as to the location and/or extent of the redaction, the GRC should be contacted for clarification before the record is redacted. The GRC recommends the redactor make a paper copy of the original record and manually "black out" the information on the copy with a dark colored marker, then provide a copy of the blacked-out record to the requester.

		<p><u>Redaction 2</u> – Under section entitled “Mayor questioned CWA”, second (2<sup>nd</sup>) paragraph.</p>	<p>Redactions are exempt as contractual discussions regarding negotiations with the City’s unions and employment negotiations with the Chief of Police and Deputy Chief of Police pursuant to <u>N.J.S.A. 47:1A-1.1.</u></p>	<p>(<u>N.J.S.A. 47:1A-1.1.</u>) and contract negotiations pursuant to OPMA (<u>N.J.S.A. 10:4-12</u> and <u>N.J.S.A. 47:1A-9.a.</u>).</p> <p>This redaction is lawful since this part of the executive session discussion is exempt as information generated by or on behalf of public employers or public employees in connection with collective negotiations, including documents and statements of strategy or negotiating position pursuant to OPRA (<u>N.J.S.A. 47:1A-1.1.</u>) and contract negotiations pursuant to OPMA (<u>N.J.S.A. 10:4-12</u> and <u>N.J.S.A. 47:1A-9.a.</u>).</p>
2.	Executive Session Minutes of August 21, 2008	Redactions in fifth (5 <sup>th</sup> ) paragraph.	Redactions are exempt as a discussion of litigation pursuant to <u>N.J.S.A. 47:1A-9.a.</u> and <u>N.J.S.A. 10:4-12.</u>	This redaction is lawful since this part of the executive session discussion is exempt as pending or anticipated litigation under OPMA ( <u>N.J.S.A. 10:4-12</u> ) which is exempt under

				OPRA pursuant to <u>N.J.S.A. 47:1A-9.a.</u>
3.	Executive Session Minutes of September 2, 2008	No redactions made.	No redactions made.	No redactions made.

Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. A motion was made by Mr. Richman and seconded by Ms. Sarafin. The motion passed unanimously.

**Paul Kaplan v. Winslow Township Board of Education (Camden) (2009-148)**

Ms. Lownie reviewed the GRC’s analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Lownie presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. The Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007). Further, the Custodian should have provided the Complainant access to the requested records rather than informing the Complainant that said records were available on the Board of Education’s website. As such, the Custodian violated N.J.S.A. 47:1A-1 pursuant to Windish v. Mount Arlington Public Schools, GRC Complaint No. 2005-216 (August 2006), and Langford v. City of Perth Amboy, 2005-181 (March 2007).
2. The Custodian may only charge the actual cost of paper and toner for the reproduction of the requested records. The Custodian may not charge any amount associated with the rental of the copy machine, the program, or other administrative costs.
3. The Custodian must, therefore, contact the Township’s supplier to determine the cost of toner, as well as the average paper life of one toner or ink cartridge (*i.e.*, how many pieces of paper the ink or toner cartridge should be able to copy). The Custodian must also calculate or contact the copy machine company to determine the Township’s annual copying volume (calendar or fiscal year, however the agency operates). The Custodian must maintain documentation of all information provided by copying company or office supplier (*i.e.*, contracts or correspondence from purchasing agent or copying company) regarding this calculation. Finally, the Custodian must calculate and charge the Complainant a copying fee based upon the following actual cost calculation: total cost of paper purchased for 1 year (calendar or fiscal) + the total cost of toner purchased (calendar or fiscal) ÷ the annual copying volume = per page copying cost. The Custodian shall provide the resulting amount to the Complainant.

4. **The Custodian shall comply with item #3 above within five (5) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4<sup>3</sup>, to the Executive Director.<sup>4</sup>**
5. 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 Custodian's compliance with the Council's Interim Order.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Mr. Richman and seconded by Ms. Sarafin. The motion passed unanimously.

**Robert Verry v. Borough of South Bound Brook (Somerset) (2009-149)**

Mr. Caruso reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Mr. Caruso presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. The Custodian's response is insufficient pursuant to N.J.S.A. 47:1A-5.g. and Shanker v. Borough of Cliffside Park (Bergen), GRC Complaint No. 2007-245 (March 2009) because he failed to specifically state that no records responsive to the request for the period of February 25, 2008 to July 6, 2008 existed at the time of his response.
2. Because the Custodian certified in the Statement of Information that no records responsive to the request exist for this time period, and because the Complainant has not provided any evidence to refute the Custodian's certification in this regard, the Custodian has not unlawfully denied access to the Custodian's hours worked for February 25, 2008 to July 6, 2008 pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).
3. Although the Custodian's response to the Complainant's OPRA request was insufficient pursuant to N.J.S.A. 47:1A-5.g. and Shanker v. Borough of Cliffside Park (Bergen), GRC Complaint No. 2007-245 (March 2009) and he failed to advise the Complainant that no records responsive to the request for the period of February 25, 2008 to July 6, 2008 existed, because the Custodian did not unlawfully deny access to such pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

---

<sup>3</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

<sup>4</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

4. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006) and Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), the Complainant is not a “prevailing party” entitled to an award of reasonable attorney’s fees. The filing of this complaint did not bring about a change (voluntary or otherwise) in the Custodian’s conduct because there are no records to disclose.

Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. A motion was made by Ms. Sarafin and seconded by Mr. Richman. The motion passed unanimously.

**Laura Danis v. Garfield Board of Education (Bergen) (2009-156)**

**Laura Danis v. Garfield Board of Education (Bergen) (2009-157)**

**Laura Danis v. Garfield Board of Education (Bergen) (2009-158)**

Mr. Caruso reviewed the GRC’s analysis and issues in the case as set forth in the *Reconsideration* Supplemental Findings and Recommendations of the Executive Director. Mr. Caruso presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that because “name, title, position, salary, payroll record and length of service” is information which is specifically considered to be a government record under N.J.S.A. 47:1A-10, and because “payroll records” must be disclosed pursuant to Jackson v. Kean University, GRC Complaint No. 2002-98 (February 2004), the Complainant’s March 25, 2009 request for “[t]he name, position, salary, payroll record and length of service for every Board/District employee who was employed in whole or part from January 1, 2008 to March 24, 2009” is a valid request pursuant to OPRA. And as such, the Council’s April 28, 2010 Interim Order is amended accordingly. This amendment changes the conclusions and recommendations contained in the Council’s April 28, 2010 Interim Order as follows:

1. Although the Custodian’s failure to provide a written response to the Complainant’s three (3) records requests within the statutorily mandated seven (7) business days resulted in a “deemed” denial, because the Custodian bore his burden of proving a lawful denial of access to the minutes responsive to the Complainant’s March 26, 2009 OPRA request No. 1, and because the Custodian provided all records responsive to the Complainant’s March 25, 2009 OPRA request and March 26, 2009 OPRA request No. 2 on June 15, 2009, it is concluded that the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
2. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), and Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), the GRC is unable to determine whether the Complainant is a “prevailing party” entitled to an award of reasonable attorney’s fees. Specifically, the GRC cannot determine whether the filing of this complaint brought about a change (voluntary or otherwise) in the Custodian’s conduct because the Custodian responded in writing and provided access to the records responsive to the Complainant’s March 25, 2009 OPRA request and March 26, 2009 OPRA request No. 2 following the filing of this complaint. Therefore, this complaint should be referred to the Office of Administrative Law for a determination of whether the filing of the Complainant’s Denial of Access Complaint

was the catalyst for the Custodian's change in conduct and, if warranted, a determination of the amount of appropriate prevailing party attorney's fees.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Mr. Richman and seconded by Ms. Auerswald. The motion passed unanimously.

**Jermain Vaughn v. City of Trenton (Mercer) (2009-177)**

Ms. Lownie reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Lownie presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. The requested psychological test and medical reports for Trenton Police Department Detective, Robert Sheehan (retired) are exempt from disclosure under OPRA pursuant to N.J.S.A. 47:1A-9.a. and Executive Order No. 26, paragraph 4.b.1 (McGreevey 2002) as "information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation." As such, the Custodian lawfully denied access to said records pursuant to N.J.S.A. 47:1A-6. See Hamilton v. NJ Department of Corrections, GRC Complaint No. 2007-196 (March 2008), Kamau v. NJ Department of Corrections, GRC Complaint No. 2004-175 (February 2005), and Caban v. NJ Department of Corrections, GRC Complaint No. 2004-174 (March 2005).
2. Based on the evidence of record, although the Custodian responded in writing to the Complainant's OPRA request within the statutorily mandated time frame pursuant to N.J.S.A. 47:1A-5.i., the Custodian's response was legally insufficient because she failed to specifically respond to the Complainant's request for Detective Sheehan's disciplinary history. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5.g. and Paff v. Willingboro Board of Education (Burlington), GRC Complaint No. 2007-272 (May 2008).
3. Although the Custodian violated OPRA at N.J.S.A. 47:1A-5.g. by failing to provide a response to the Complainant's request for the disciplinary history for Trenton Police Department Detective, Robert Sheehan (retired), said record is exempt from disclosure as a personnel record pursuant to N.J.S.A. 47:1A-10 and Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (March 2004).
4. Although the Custodian violated N.J.S.A. 47:1A-5.g. by failing to specifically respond to the Complainant's request for the disciplinary history for Trenton Police Department Detective, Robert Sheehan (retired), said record is exempt from disclosure as a personnel record pursuant to N.J.S.A. 47:1A-10 and Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (March 2004). Additionally, the Custodian lawfully denied access to the requested psychological test and medical reports for Trenton Police Department Detective, Robert Sheehan (retired). Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.



Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Sarafin and seconded by Mr. Richman. The motion passed unanimously.

**Miguel Mendes v. Freedom Academy Charter School (Camden) (2009-184)**

Mr. Caruso reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Mr. Caruso presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. The Custodian's failure to respond in writing to the Complainant's letter 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 letter 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 (October 2007).
2. Because the Complainant's request for personnel meeting minutes and executive session meeting minutes "during the 2008-2009 school year which led to the non-renewal of the Complainant's contract" would require the Custodian to conduct research in order to respond to the request, the Complainant's request is invalid under OPRA. 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); New Jersey Builders' Ass'n v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007).
3. Because the Complainant's OPRA request for e-mail correspondence contains the sender and/or recipient, content of the e-mail and a specific date range, said portion of the OPRA request is valid under OPRA. See Sandoval v. NJ State Parole Board, GRC Complaint No. 2006-167 (October 2008), and Elcavage v. West Milford Township (Passaic), GRC Complaint No. 2009-07 (March 2010).
4. Pursuant to Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the requested May 14, 2009 e-mail chain to determine the validity of the Custodian's assertion that the record contains information which is exempt from disclosure as attorney-client privileged pursuant to N.J.S.A. 47:1A-1.1.
5. **The Custodian must deliver<sup>5</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted record (see No. 4 above), a document or redaction index<sup>6</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4<sup>7</sup>, that the record provided is the record requested by the**

---

<sup>5</sup> The *in camera* documents may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

<sup>6</sup> The document or redaction index should identify the document and/or each redaction asserted and the lawful basis for the denial.

<sup>7</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

**Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**

6. 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 Custodian's compliance with the Council's Interim Order.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Mr. Richman and seconded by Ms. Sarafin. The motion passed unanimously.

**Rory Moore v. Township of Nutley (Essex) (2009-186)**

Mr. Caruso reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Mr. Caruso presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. The Complainant's OPRA request for "... salary and overtime information, including all stipends, bonuses, overtime, expenses and any other form of financial or non-financial compensation." is a valid OPRA request pursuant to N.J.S.A. 47:1A-5.e. and N.J.S.A. 47:1A-10 and Jackson v. Kean University, GRC Complaint No. 2002-98 (February 2004).
2. Because the Custodian failed to immediately grant or deny access to the requested salary and overtime information, request additional time to respond or request clarification of the request, the Custodian has violated N.J.S.A. 47:1A-5.e. pursuant to Herron v. Township of Montclair, GRC Complaint No. 2006-178 (February 2007).
3. The Custodian has failed to provide records responsive to the Complainant's OPRA request. **The Complainant must disclose records for the years 2005 through 2009 showing Ms. Pettas's "salary, overtime information, including all stipends, bonuses, overtime, expenses and any other form of financial or non-financial compensation." If no records exist which pertain to one of the requested criteria relating to Ms. Pettas, the Custodian must certify to such.**
4. **The Custodian shall comply with Item No. 3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4<sup>8</sup>, to the Executive Director.<sup>9</sup>**

---

<sup>8</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

<sup>9</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

5. Because the Complainant's second (2<sup>nd</sup>) request would require the Custodian to research her records to locate "a plan required to be created...pursuant to the Americans with Disabilities Act" that may be responsive which is not required pursuant to Donato v. Township of Union, GRC Complaint No. 2005-182 (February 2007), the request is invalid under OPRA pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005), and Bart v. County of Passaic Public Housing Authority, GRC Complaint No. 2008-59 (September 2009).
6. 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 Custodian's compliance with the Council's Interim Order.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Sarafin and seconded by Mr. Richman. The motion passed unanimously.

**Laura Tracey-Coll v. Elmwood Park Board of Education (Bergen) (2009-206)**

Ms. Lack reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Lack presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that because the Complainant's request for "all documents" related to the installation of playground equipment fails to specifically identify government records sought, and because the Complainant's request for Board of Education minutes fails to specify a particular date and would also require the Custodian to conduct research to locate responsive records, and because the Complainant's request for licenses fails to provide names, date ranges, or any other means of identifying responsive records, and because the Complainant's request for "all other paperwork" fails to specify identifiable government records, the request is invalid under OPRA. See 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); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Mr. Richman and seconded by Ms. Sarafin. The motion passed unanimously.

**Salvatore LaRosa v. Plainfield Municipal Utilities Authority (Union) (2009-220)**

Ms. Lack reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Lack presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. Although the Custodian provided a written response to the Complainant's amended request within the statutorily mandated seven (7) business days, said response is

insufficient pursuant to OPRA because it does not grant access, deny access, seek clarification, or request an extension of time. Thus, the request for the sewer fee formula is “deemed” denied pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Bart v. City of Paterson Housing Authority, GRC Complaint No 2005-145 (May 2007).

2. The Complainant’s request for the formula used to determine the 2009 per unit Sewer Fee fails to specify an identifiable government record. Therefore, such request is invalid under OPRA pursuant to 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), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007) and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. A motion was made by Mr. Richman and seconded by Ms. Sarafin. The motion passed unanimously.

**Rosamond Ryan v. NJ Department of Environmental Protection (2009-268)**

Ms. Lack reviewed the GRC’s analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Lack presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that because the Complainant’s request for all permits or regulatory decision documents concerning threatened or endangered species throughout the State fails to specifically identify government records sought and fails to specifically identify a type of threatened species, date range, and/or specific location in the State, the request is invalid under OPRA. *See* 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); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. A motion was made by Ms. Sarafin and seconded by Mr. Richman. The motion passed unanimously.

**Shadi James v. NJ Department of Corrections (2009-283)**

Ms. Lack reviewed the GRC’s analysis and issues in the case as set forth in the Supplemental Findings and Recommendations of the Executive Director. Ms. Lack presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that the Complainant’s request for information regarding the training of drug and cell phone sniffing dogs fails to specify an identifiable government record sought. Therefore, such request is invalid under OPRA. 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), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Mr. Richman and seconded by Ms. Sarafin. The motion passed unanimously.

**Christopher Gray v. County of Camden (2010-11)**

Mr. Stewart reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Mr. Stewart presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. The Custodian's failure to respond in writing to the Complainant's OPRA requests 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 requests 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 (October 2007).
2. Because the Complainant's requests for the records relevant to the complaint are overbroad and fail to specifically identify the records sought, and because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian had no legal duty to conduct research to locate records potentially responsive to the Complainant's requests pursuant to the Superior Court's decisions in MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council of Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) and the Council's decisions in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (March 2008) and Elcavage v. West Milford Township (Passaic), GRC Complaint No. 2009-07 (April 8, 2010).
3. Although the Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i., by failing to respond to the Complainant's OPRA requests in writing within the statutorily mandated seven (7) business days which resulted in a "deemed" denial of the Complainant's OPRA requests, and although the Custodian failed to complete and submit the Statement of Information to the GRC as requested, the Custodian did respond in writing to the Complainant's requests within eleven (11) business days denying the Complainant's requests. Further, there is no evidence in the record to suggest that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Sarafin and seconded by Mr. Richman. The motion passed unanimously.

**Richard Rivera v. City of Atlantic City, Police Department (Atlantic) (2010-12)**

Mr. Stewart reviewed the GRC's analysis and issues in the case as set forth in the Supplemental Findings and Recommendations of the Executive Director. Mr. Stewart presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian made available to the Complainant all records responsive to the Complainant's October 5, 2009 OPRA request in unredacted form; to wit, the Atlantic City Police Department use of force reports for 2008, and provided certified confirmation of compliance in accordance with N.J. Court Rule 1:4-4 to the Executive Director within the time provided for such compliance, as extended, the Custodian has complied with the terms of the Council's April 8, 2010 Interim Order.
2. Although the Custodian's failure to provide a written response to the Complainant's OPRA request within the statutorily mandated seven (7) business days resulted in a "deemed" denial, because the Custodian in a timely manner complied with the Council's Interim Order dated April 8, 2010, and forwarded a certification to the GRC in which the Custodian averred that the requested records had been made available to the Complainant in unredacted form, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Sarafin and seconded by Mr. Richman. The motion passed unanimously.

**Complaints on Appeal:** None.

**Complaints Adjudicated on NJ Superior Court & NJ Supreme Court:** None.

**Executive Director's Report and New Business:** None.

**Public Comment:** None.

A motion to end the Council's meeting was made by Mr. Richman and seconded by Ms. Sarafin. The motion passed unanimously.

Meeting adjourned at 11:04 a.m.

Respectfully submitted,

---

Charles Richman, Secretary

Date Approved: November 30, 2010