



**Minutes of the Government Records Council  
August 11, 2009 Public Meeting – Open Session**

The meeting was called to order at 9:50 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, Janice Kovach (designee of Department of Community Affairs Acting Commissioner Charles Richman) and Kathryn Forsyth (designee of Department of Education Commissioner Lucille Davy).

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, Sherin Keys, IT Specialist Jyothi Pamidimukkala, Designated Outside Counsel Gina Orosz, and Deputy Attorney General Debra Allen.

Ms. Tabakin read the Resolution for Closed Session (Resolution Number 2009-08-11) 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. Beth Barile v. Stillwater Township (2007-92) (*In-Camera review*)
2. Randolph Young v. NJ Department of Personnel (2007-210) (*In-Camera review*)
3. Martin O’Shea v. Stillwater Township (Sussex) (2007-253) (*In-Camera review*)
4. Joan McGee v. Township of East Amwell (Hunterdon) (2007-305) (*In-Camera review*)
5. Tina Renna v. Union County Improvement Authority (Union) (2008-86) (*In-Camera review*)

A motion was made to go into closed session by Ms. Forsyth and seconded by Ms. Kovach to go into closed session. The motion was adopted by a unanimous vote. A motion was made by Ms. Kovach and seconded by Ms. Forsyth to end the closed session. The motion was adopted by a unanimous vote. The Council met in closed session from 9:53 a.m. until 10:10 a.m.

Ms. Tabakin read the Resolution for Closed Session (Resolution Number 2009-08-11(2)) 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. New Jersey Foundation for Open Government v. New Jersey Government Records Council (in Superior Court)

Another motion was made to go into closed session again by Ms. Forsyth and seconded by Ms. Kovach to go into closed session. The motion was adopted by a unanimous vote. A motion was made by Ms. Kovach and seconded by Ms. Forsyth to end the closed session. The motion was adopted by a unanimous vote. The Council met in closed session from 10:16 a.m. until 10:34 a.m.

Open Session reconvened at 10:36 a.m. and Ms. Hairston called roll.

Present: Ms. Tabakin, Ms. Kovach, and Ms. Forsyth.

A motion was made by Ms. Kovach and seconded by Ms. Forsyth to accept the draft minutes to approve the open session minutes of the June 11, 2009 meeting. The motion passes by an unanimous vote. (Please note there were no closed session minutes for the June 11, 2009 because the Council did not go into closed session.)

A motion was made by Ms. Forsyth and seconded by Ms. Kovach to approve the open session minutes of the August 11, 2009 meeting. The motion passes by an unanimous vote. A motion was made by Ms. Forsyth and seconded by Ms. Kovach to approve the closed session minutes of the August 11, 2009 meeting. The motion passes by an unanimous vote. (Please note that Ms. Kovach was not in attendance at the August 11, 2009 meeting. However, Mr. Scouder who served in Ms. Kovach's place for that meeting reviewed the minutes and gave permission to Ms. Kovach to approve them as accurate. Additionally, Ms. Kovach indicated that she read the minutes herself and is aware of their content.)

### **Council Adjudication:**

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

1. LaGrant Greer v. NJ State Parole Board (2008-60)
2. Kenneth Mayer v. Township of Roxbury (Morris) (2008-118)
3. Greg Badini v. County of Hunterdon (2008-197)
4. Quddoos Farra'D v. NJ Department of Corrections (2008-215)
5. Charles Steinel v. Borough of Bergenfield (Bergen) (2009-40)
6. Laura Danis v. Garfield Board of Education (Bergen) (2009-41)
7. Patricia Carter-Falotico v. Central Regional School District (Ocean) (2009-65)
8. Leon Singletary v. County of Essex (2009-66)
9. Emory Ghana v. University of Medicine & Dentistry of NJ (2009-96)
10. Cynthia McBride v. Township of Bloomfield (Essex) (2009-104)
11. Louis Toscano v. NJ Department of Human Services, Greystone Park Psychiatric Hospital (2009-131)

12. Louis Toscano v. NJ Department of Labor, Division of Disability Determination (2009-152)
13. Barbara Sachau v. NJ State Legislature, Office of Legislative Services (2009-196)
14. Frank D'Amore v. Borough of Plainfield (Somerset) (2009-137)
15. RaheemTaylor v. New Jersey Department of Corrections (2009-209)

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 Ms. Kovach and seconded by Ms. Forsyth. The motion passed unanimously.

The following complaints were presented to the Council for individual adjudication:

**James D'Andrea v. NJ Department of Community Affairs, Division of Local Government Services (2007-64)**

This matter was not put to a vote due to the lack of a quorum.

**William Gettler v. Wantage Regional Schools, Board of Education (2007-105) (Sussex)**

This matter was not put to a vote due to the lack of a quorum.

**Joyce Blay v. Jackson Board of Education (Ocean) (2007-177)**

This matter was not put to a vote due to the lack of a quorum.

**John Paff v. Borough of Lavallette (Ocean) (2007-209) RBT Recusal**

This matter was not put to a vote due to the lack of a quorum.

**David Hinchcliffe v. NJ Department of Community Affairs, Division of Local Government Services (2007-306)**

This matter was not put to a vote due to the lack of a quorum.

**Tracy Carluccio v. NJ Department of Environmental Protection (2008-10)**

This matter was not put to a vote due to the lack of a quorum.

**John Bentz v. Borough of Paramus (Bergen) (2008-89)**

This matter was not put to a vote due to the lack of a quorum.

**Ursula Cargill v. NJ Department of Education (2009-09)**

This matter was not put to a vote due to the lack of a quorum.

**Ursula Cargill v. State Ethics Commission (2009-10)**

This matter was not put to a vote due to the lack of a quorum.

**Allan Johnson v. Borough of Oceanport (Monmouth) (2007-107)**

Ms. Gordon reviewed the GRC's analysis and issues in the case as set forth in the 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 because Hugh Sharkey has failed to establish in his motion for reconsideration of the Council's February 25, 2009 Administrative Disposition 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, and failed to submit any evidence to contradict the Custodian's certification that all records responsive to the Complainant's OPRA request were provided to him within the statutorily required response time, 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).

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

**Michelle Ewing v. NJ Department of Law & Public Safety, Division of Consumer Affairs (2007-119)**

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

The Executive Director respectfully recommends the Council find no further adjudication is necessary since the parties settled the matter between themselves.

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

**Randolph Young v. NJ Department of Personnel (2007-210)**

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:

1. The Custodian has complied with the Council's November 19, 2008 Interim Order by providing the Council with all records set forth in Paragraph 2 of the Order within five (5) business days of receiving the Council's Order.
2. **On the basis of the Council's determination in this matter, the Custodian shall comply with the Council's Findings of the *In Camera* Examination set forth in the table below within five (5) business days from receipt of**

this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rule 1:4-4,<sup>1</sup> to the Executive Director.

Record or Redaction Number	Record Name/Date	Description of Record or Redaction	Custodian's Explanation/ Citation for Non-disclosure or Redactions	Findings of the <i>In Camera</i> Examination <sup>2</sup>
1	New Jersey Department of Personnel, Division of Human Resource Management <i>Position Classification Questionnaire</i> for Employee Dennis C. Reddick dated January 12, 2006 (3 pages).	Record detailing Dennis C. Reddick's job responsibilities and salary.	1) Redactions of supervisory status and performance evaluation of public employees were based on the personnel exemption contained in <u>N.J.S.A. 47:1A-10</u>  2) Initial denial of access to questionnaire was pursuant to <u>N.J.S.A. 47:1A-1.1</u> for its advisory, consultative or deliberative role in the classification process.	Page 3, response to Item 15(A): redact the first sentence which contains opinion and is exempt as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .  Page 3, response to Item 15(B): redact in its entirety because it contains opinion and is exempt as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .  The balance of the record contains factual material that is not ACD.

<sup>1</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>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.

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

**Carolyn James v. Holmdel Township Board of Education (Monmouth)**

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

The Executive Director respectfully recommends the Council find:

1. Because the agency received the record in the ordinary course of business and maintained a copy of the record, the record is a government record pursuant to N.J.S.A. 47:1A-1.1. Therefore, pursuant to N.J.S.A. 47:1A-1.1 and N.J.S.A. 47:1A-6, the Custodian has unlawfully denied the Complainant access to the record requested because the record requested is a government record as defined by OPRA.
2. Because the record requested is a government record pursuant to N.J.S.A. 47:1A-1.1, the Custodian must disclose the requested record to the Complainant.
3. **The Custodian shall comply with item #2 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>3</sup> to the Executive Director.**
4. Although the basis for denying the Complainant's OPRA request was unlawful, the Custodian's actions do not rise to a level of a knowing and willful violation of OPRA because the Custodian sought and relied on the legal advice of counsel in denying the Complainant access to the record requested, although that advice was erroneous. See Bart v. City of Patterson Housing Authority, 403 N.J. Super. 609, (App. Div. 2008) (holding that there is no knowing and willful violation of OPRA where the custodian has sought legal counsel). Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances. However, the Custodian's unlawful denial of access appears negligent and heedless since he is vested with the legal responsibility of granting and denying access in accordance with the law.

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<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."

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

**Stephen Jung v. Borough of Roselle (Union) (2007-299) and Joseph O'Halloran v. Borough of Roselle (Union) (2007-307)**

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:

1. Because the Chief Financial Officer certified that the Finance Department does not maintain any records responsive to the Complainants' requests and because the Chief Financial Officer provided said certification to the GRC within the extended deadline date, the Chief Financial Officer has complied with the Council's April 29, 2009 Interim Order.
2. Although the Borough Administrator certified that she does not maintain any records responsive to the Complainants' requests, the Borough Administrator failed to provide said certification to the GRC within the extended deadline date. As such, the Borough Administrator has not fully complied with the Council's April 29, 2009 Interim Order.
3. Because the GRC has not received any response from the Zoning Officer, the Zoning Officer has not complied with the Council's April 29, 2009 Interim Order.
4. Because the Zoning Officer failed to respond to the Custodian's January 27, 2009 and January 30, 2009 requests for records responsive to request item # 4, and because the Zoning Officer failed to comply with the Council's Interim Order (after receiving said Order with the GRC's contact information on three (3) separate occasions and received an extension from the GRC to comply with said Order), it is possible that the Zoning Officer's actions were intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. As such, these complaints should be referred to the Office of Administrative Law for determination of whether the Zoning Officer knowingly and willfully violated OPRA and unreasonably denied 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. Forsyth and seconded by Ms. Kovach. The motion passed unanimously.

**Brian Reynolds v. NJ State Board of Public Utilities (2008-14)**

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:

1. Although the Custodian certifies that Complainant did not submit his request on an official OPRA request form, the Custodian's attempt to fulfill the request results in the request being considered a valid OPRA request pursuant to John Paff v. Borough of Audubon, GRC Complaint No. 2006-01 (March 2006).
  2. 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).
  3. Pursuant to N.J.S.A. 47:1A-1, the Custodian did not unlawfully deny access to the redacted portions of the requested records because the redacted portions are exempt from disclosure due to privacy concerns.
1. Although the Custodian failed to respond to the Complainant's OPRA request within the statutorily mandated seven (7) business days, the Custodian did respond to the request on the eighth (8<sup>th</sup>) business day, and further, bore the burden of proving that the redacted names and addresses from the records responsive to the Complainant's request were exempt from disclosure under OPRA. 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. However, the Custodian's unlawful "deemed" denial of access appears negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.

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

**Laurie Sands v. NJ Office of the Governor (2008-24)**

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

The Executive Director respectfully recommends the Council find because the Complainant's January 2, 2008 request failed to specifically name identifiable government records sought and would have required the Custodian to manually search through all of the agency's files and analyze, compile and collate the information contained therein, it is invalid under OPRA. See New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); 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); Donato v. Township of Union, GRC Complaint No. 2005-182 (February 2007).



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

**Carrie Syme v. NJ Office of the Governor (2008-51)**

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

The Executive Director respectfully recommends the Council find because the Complainant's February 25, 2008 request failed to specifically name identifiable government records sought and would have required the Custodian to manually search through all of the agency's files and analyze, compile and collate the information contained therein, it is invalid under OPRA. See New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); 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); Donato v. Township of Union, GRC Complaint No. 2005-182 (February 2007). Please note that if the requestor had submitted a valid OPRA request which named specifically identifiable government records, the GRC's procedures require that an enforcement proceeding in the New Jersey Superior Court be initiated against the Custodian to force submission of a Statement of Information. No such proceeding is necessary here since the requestor did not submit a valid OPRA request.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations with amendments. A motion was made by Ms. Kovach and seconded by Ms. Forsyth. The motion passed unanimously.

**John Paff v. Township of Springfield (Union) (2008-77)**

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:

1. Because the Custodian's Counsel provided the Complainant with the requested letter proposal referred to by Resolution No. 2007-49 with appropriate redactions and identified the legal basis for said redactions, as well as because the Custodian's Counsel provided certified confirmation of compliance to the GRC's Executive Director within the five (5) business days as ordered by the Council, the Custodian has complied with the Council's June 23, 2009 Interim Order.
2. Although the Custodian violated OPRA on several counts, the evidence of record does not indicate that the Custodian's actions were intentional, more than negligent conduct, or that the Custodian had knowledge of her wrongfulness or conscious wrongdoing. 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. However, the Custodian's multiple violations regarding her failure to adhere to the statutorily mandated response time appear

negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.

3. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), and the Council's June 23, 2009 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 either provided the requested records to the Complainant, or provided a certification that no records responsive exist. 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. Specifically, the Custodian failed to provide the Complainant with certain requested records or a specific response that no records responsive exist until after the filing of said complaint. Further, the relief ultimately achieved had a basis in law. The Custodian is obligated to either grant or deny access in writing within seven (7) business days from receipt of the request pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. The Custodian also carries the burden of proving a lawful denial of access pursuant to N.J.S.A. 47:1A-6. Here, the Custodian failed to properly respond to the Complainant's OPRA requests and unlawfully denied access to the requested letter proposal. 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.

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

#### **Richard Rivera v. Union City Board of Education (Hudson) (2008-112)**

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:

1. Because the Custodian requested an extension of time to respond to the Complainant's OPRA requests dated March 17, 2008 in writing within the statutorily mandated seven (7) business days and provided an anticipated deadline date of when the requested records would be made available, the Custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i. and Starkey v. NJ Department of Transportation, GRC Complaint Nos. 2007-315, 2007-316 and 2007-317 (February 2009).
2. Because the Custodian certified that responding to twenty-one (21) OPRA requests in one (1) week would substantially disrupt the operations of his agency, and because the Custodian properly requested an extension of time to respond to the Complainant's OPRA requests dated March 17, 2008, the Custodian's request for an

extension of time to respond to the Complainant's OPRA requests is a sufficient and reasonable solution that accommodates the interests of the requestor and the agency, pursuant to N.J.S.A. 47:1A-5.g.

3. Although the Custodian properly requested an extension of time to respond to the Complainant's request for tenure charges filed against Sabino Valdes, the Custodian failed to adhere to the extended deadline date because the Custodian's written response dated April 1, 2008 did not grant or deny access to the requested tenure charges, but rather indicated that the Board Attorney was conducting research on whether the requested records could be released. Pursuant to Paff v. Bergen County Prosecutor's Office, GRC Complaint No. 2005-115 (March 2006), seeking legal advice is reasonable, but is not a lawful basis for delaying a response to an OPRA request. As such, the Custodian's failure to grant or deny access in writing to the requested tenure charges filed against Sabino Valdes within the extended deadline date results in a "deemed" denial of said request pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.
4. Because the Custodian's estimated ten (10) hour expenditure of time to fulfill the Complainant's request for tenure charges filed against Sabino Valdes is based on the thirteen (13) hours the Board of Education actually expended searching the same 27 boxes in response to another OPRA request, the Custodian's estimated ten (10) hours constitutes an extraordinary expenditure of time and warrants a special service charge pursuant to N.J.S.A. 47:1A-5.c.
5. Pursuant to N.J.S.A. 47:1A-5.c. and Courier Post v. Lenape Regional High School District, 360 N.J. Super. 191, 204 (Law Div. 2002), the special service charge should reflect the estimated ten (10) hours to search, locate, copy, redact and return the records to their original location, as well as the Confidential Secretary to the Board Secretary's hourly rate of \$31.63 per hour. As such, the special service charge totals \$316.30. Thus, the Custodian's \$320.00 charge is unreasonable because it does not reflect the actual direct cost of fulfilling the request pursuant to N.J.S.A. 47:1A-5.c. However, this issue is now moot since the Custodian located the requested tenure charges dated April 27, 2000 while responding to another OPRA request and has made said record available to the Complainant for the per page copy fee and without a special service charge.
6. Because the Custodian in this complaint certified that there are no records responsive to the Complainant's request for tenure charges filed against Sabino Valdes dated August 2, 2000, and there is no credible evidence in the record to refute the Custodian's certification, the Custodian would have borne her burden of proving that this denial of access was authorized by law pursuant to N.J.S.A. 47:1A-6 and Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), had the Custodian properly responded in writing within the extended deadline date pursuant to N.J.S.A. 47:1A-5.i.
7. Although the Custodian properly requested an extension of time to respond to the Complainant's request for tenure charges filed against Charles Trelease, the

Custodian failed to adhere to the extended deadline date because the Custodian's written response dated April 1, 2008 did not grant or deny access to the requested tenure charges, but rather indicated that the Board Attorney was conducting research on whether the requested records could be released. Pursuant to Paff v. Bergen County Prosecutor's Office, GRC Complaint No. 2005-115 (March 2006), seeking legal advice is reasonable, but not a lawful basis for delaying a response to an OPRA request. As such, the Custodian's failure to grant or deny access in writing to the requested tenure charges filed against Charles Trelease within the extended deadline date results in a "deemed" denial of said request pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.

8. The Custodian's written request dated April 18, 2008 for an additional extension of time to fulfill the Complainant's request for tenure charges filed against Charles Trelease is improper pursuant to N.J.S.A. 47:1A-5.i. because the Custodian made said request beyond the extension deadline ending April 4, 2008 initially requested by the Custodian.
9. The Custodian unlawfully denied access to the requested tenure charges filed against Charles Trelease by failing to properly grant or deny access, failing to comply with his extended deadline date, and failing to properly obtain a second extension of time.
10. Because the Custodian conducted a reasonable search for the requested special meeting minutes in the Board of Education's ledger minute book and six (6) archived boxes of records, and because the Custodian certified that he was not aware of the existence or the contents of the box labeled "Nancy's Copies" in which the Custodian's assistant located portions of the requested minutes, the Custodian did not unlawfully deny access to said minutes and has borne his burden of proving his due diligence in searching for said records pursuant to N.J.S.A. 47:1A-6.
11. Because the Custodian denied access to the Complainant's request for the Statement of Items Comprising the Record within the extended deadline date, and because the Custodian certifies that the Board of Education does not maintain any records responsive to said request, as well as because the Complainant has not provided any evidence to contradict the Custodian's certification, the Custodian has borne his burden of proving a lawful denial of access pursuant to N.J.S.A. 47:1A-6.
12. The Custodian's failure to respond in writing to the Complainant's April 8, 2008 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). However, the Board Attorney made the requested records available to the Complainant via letter dated June 3, 2008.
13. The Custodian's failure to provide written responses to the Complainant's OPRA requests within the statutorily mandated seven (7) business days resulted in a "deemed" denial. Additionally, although a special service charge was warranted to provide the requested tenure charges filed against Sabino Valdes, the special service

assessed was unreasonable. However, the Custodian properly requested an extension of time to respond to the Complainant's OPRA requests dated March 17, 2008 due to a substantial disruption of agency operations. Additionally, the Custodian bore his burden of proving a lawful denial of access to the requested Statement of Items Comprising the Record as well as the special meeting 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. However, the Custodian's unlawful "deemed" denial of access and unreasonable special service charge appears negligent and heedless since he is vested with the legal responsibility of granting and denying access in accordance with the law.

14. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), 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 (the Custodian was legally obligated to respond to the Complainant's OPRA requests pursuant to N.J.S.A. 47:1A-5.g.). As such, 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.

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

**Alison McManus v. West Milford Township (Passaic) (2008-129)**

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

The Executive Director respectfully recommends the Council find:

1. Because the Custodian treated the Complainant's OPRA request as a valid request and failed to raise the Complainant's failure to use the official West Milford OPRA request form in the Custodian's first response to the Complainant's OPRA request, the Custodian cannot use the lack of an official OPRA request form as a reason to invalidate the Complainant's OPRA request.
2. Pursuant to N.J.S.A. 47:1A-10, N.J.A.C. 12:16-2.1(a) and Weimer v. Township of Middletown, GRC Complaint No. 2004-22 (August 2005), the leave request forms requested by the Complainant are government records disclosable pursuant to OPRA. See Zucker v. Bergen County Improvement Authority, GRC Complaint No. 2008-68 (December 2008). Because the requested leave forms are

government records, the Custodian violated N.J.S.A. 47:1A-6 by unlawfully denying the Complainant access to the records requested on the basis that the requested records were exempt as personnel records pursuant to OPRA.

3. Because a leave request form is a type of payroll record and is exempted from the prohibition to disclosure set forth at N.J.S.A. 47:1A-10, the Custodian must disclose the requested records.
4. **The Custodian shall comply with item #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>4</sup> to the Executive Director.**
5. Although the Custodian violated N.J.S.A. 47:1A-6, by failing to disclose the requested records, the Custodian attempted to fulfill the request. The Custodian initially denied the Complainant's request on the basis the records requested were not disclosable pursuant to OPRA. However, three (3) days later the Custodian informed the Complainant that her OPRA request was invalid because it was not on West Milford's official OPRA request form. At the same time, the Custodian indicated that she was forwarding the Complainant's OPRA request to all department heads within the agency. The Custodian's actions indicate uncertainty as to the proper response. Because the Custodian has not demonstrated the requisite knowledge of the wrongfulness of her actions, 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. However, the Custodian's denial of access appears negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.

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

**Kathleen Fallstick v. Haddon Township (Camden) (2008-156)**

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

The Executive Director respectfully recommends the Council find that:

1. Because the requested record is disclosable pursuant to N.J.S.A. 47:1A-10, N.J.S.A. 47:1A-9.b., Executive Order No. 26 (McGreevey 2002), and Mendes v. Tinton Falls Board of Education, GRC Complaint No. 2006-201 (March 2007), the Custodian has violated N.J.S.A. 47:1A-6 by unlawfully denying the Complainant access to the requested record.

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<sup>4</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."

2. Although the Custodian violated N.J.S.A. 47:1A-6 by unlawfully denying the Complainant access to the requested record, the Custodian certified that after consulting with the Township Attorney, she ultimately provided the Complainant with a redacted copy of Ms. Burns' resume. 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. However, the Custodian's denial of access appears negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.

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

**Robert Verry v. Borough of South Bound Brook (Somerset) (2008-235)**

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:

1. The Custodian's failure to respond in writing to the Complainant's OPRA request for invoices either granting access, denying access, seeking clarification or requesting an extension of time within the extended ten (10) to fourteen (14) day time frame 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). *See* Kohn v. Township of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
2. Because the Complainant submitted proof that he was in possession of the unredacted version of the April 30, 2008 Cooper & Cooper invoice for the Police Department, requiring the Custodian to duplicate another copy of the unredacted requested record does not advance the purpose of OPRA pursuant to Bart v. City of Paterson Housing Authority, 403 N.J. Super. 609 (App. Div. 2008).
3. Although the Custodian's failure to provide a written response to the Complainant's OPRA request within the extended ten (10) to fourteen (14) day time frame resulted in a "deemed" denial, the evidence of record shows that Complainant was provided with the requested invoices on October 27, 2008. 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. However, the Custodian's unlawful "deemed" denial of access appears negligent and heedless since he is vested with the legal responsibility of granting and denying access in accordance with the law.

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

**Askia Nash v. Newark Public Schools (Essex) (2009-168)**

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 because the Complainant’s cause of action was not ripe at the time of the filing of this Denial of Access Complaint; to wit, the Custodian had not denied access to any records responsive to the Complainant’s May 14, 2009 OPRA request and the statutorily mandated seven (7) business day time frame for a Custodian to respond had not expired, the instant complaint is materially defective and therefore should be dismissed. *See Sallie v. NJ Department of Banking and Insurance*, GRC Complaint No. 2007-226 (April 2009).

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

**Beth Barile v. Stillwater Township (Sussex) (2007-92)**

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

The Executive Director respectfully recommends the Council find that:

1. The Custodian has not complied with the Council’s February 25, 2009 Interim Order by providing the Council with all records set forth in Paragraph 1 of the Order within five (5) business days of receiving the Council’s Order.
2. **On the basis of the Council’s determination in this matter, the Custodian shall comply with the Council’s Findings of the *In Camera* Examination set forth in the table below within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005) to the Executive Director.**

Record or Redaction Number	Record Name/Date	Description of Record or Redaction	Custodian’s Explanation/ Citation for Non-disclosure or Redactions	Findings of the <i>In Camera</i> Examination <sup>5</sup>

<sup>5</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



1.	October 3, 2006 Executive Session Minutes	Discussion of personnel matters.	Open Public Meetings Act exemption for personnel discussions. <u>N.J.S.A. 10:4-12.b(8).</u>	<p>1. <u>Paragraph 1 (page 1)</u>: The first full sentence (its own paragraph) should be disclosed.</p> <p>2. <u>Paragraph 2 (page 1)</u>: The first two (2) sentences should be disclosed.</p> <p>3. <u>Paragraph 3 (page 1)</u>: The first sentence should be disclosed.</p> <p>4. <u>Paragraph 5 (page 1)</u>: The first ten (10) words before the comma in the first sentence should be disclosed.</p> <p>5. <u>Paragraph 5 (cont'd page 2)</u>: disclose the first full sentence up to and including the comma beginning "Upon" and ending "officer".</p> <p>6. <u>Paragraph 11 (pages 2-3)</u>: This paragraph is exempt in its entirety as advisory, consultative or deliberative material (<u>N.J.S.A. 47:1A-1.1</u>), and</p>
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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>personnel discussions (<u>N.J.S.A. 10:4-12.b(8)</u>).</p> <p>However, the balance of this paragraph on page 3 was previously mistakenly disclosed.</p> <p>7. <u>Closing paragraph (page 3)</u>: This closing paragraph in the middle of the page, at the end of the “First Session” should be disclosed.</p> <p>2. All other redactions are proper because the redacted information is exempt from disclosure pursuant to the OPMA exempts for pending litigation (<u>N.J.S.A. 10:4-12.b(7)</u>) and personnel discussions (<u>N.J.S.A. 10:4-12.b(8)</u>), and/or as advisory, consultative or deliberative material (<u>N.J.S.A. 47:1A-1.1</u>).</p>
2.	October 17, 2006 Executive Session Minutes	Discussion of personnel matters.	Open Public Meetings Act exemption for personnel discussions. <u>N.J.S.A. 10:4-12.b(8)</u> .	<p>1. <u>Closing paragraph (page 2)</u>: This closing paragraph in the middle of the page, at the end of the “First Session” should be</p>

				<p>disclosed.</p> <p>2. <u>Closing paragraph (page 3)</u>: This closing paragraph at the bottom of the page should be disclosed.</p> <p>2. All other redactions are proper because the redacted information is exempt from disclosure pursuant to the OPMA exemptions for pending litigation (<u>N.J.S.A. 10:4-12.b(7)</u>) and/or personnel discussions (<u>N.J.S.A. 10:4-12.b(8)</u>).</p>
3.	November 14, 2006 Executive Session Minutes	Discussion of personnel matters.	OPMA exemption for personnel discussions. <u>N.J.S.A. 10:4-12.b(8)</u> .	<p>1. <u>Closing paragraph (page 2)</u>: This closing paragraph in the middle of the page, at the end of the "First Session" should be disclosed.</p> <p>2. <u>Closing paragraph (page 2)</u>: This closing paragraph at the bottom of the page should be disclosed.</p> <p>2. All other redactions are proper because the redacted information is exempt from disclosure pursuant to the</p>

				OPMA exemptions for pending litigation ( <u>N.J.S.A. 10:4-12.b(7)</u> ), personnel discussions ( <u>N.J.S.A. 10:4-12.b(8)</u> ), and/or as advisory, consultative or deliberative material ( <u>N.J.S.A. 47:1A-1.1</u> ).
4.	November 28, 2006 Executive Session Minutes	Discussion of personnel matters.	OPMA exemption for personnel discussions. <u>N.J.S.A. 10:4-12.b(8)</u> .	<p>1. <u>Closing paragraph (page 2)</u>: This closing paragraph in the middle of the page, at the end of the “First Session” should be disclosed.</p> <p>2. <u>Closing paragraph (page 2)</u>: This closing paragraph at the bottom of the page should be disclosed.</p> <p>2. All other redactions are proper because the redacted information is exempt from disclosure pursuant to the OPMA exemptions for pending litigation (<u>N.J.S.A. 10:4-12.b(7)</u>) and personnel discussions (<u>N.J.S.A. 10:4-12.b(8)</u>), and/or as advisory, consultative or</p>

				deliberative material ( <u>N.J.S.A. 47:1A-1.1</u> ).
5.	December 5, 2006 Executive Session Minutes	Discussion of personnel matters.	OPMA exemption for personnel discussions. <u>N.J.S.A. 10:4-12.b(8)</u> .	<p>1. <u>Closing paragraph (page 2)</u>: This closing paragraph at the bottom of the page should be disclosed.</p> <p>2. All other redactions are proper because the redacted information is exempt from disclosure pursuant to the OPMA exemptions for pending litigation (<u>N.J.S.A. 10:4-12.b(7)</u>) and personnel discussions (<u>N.J.S.A. 10:4-12.b(8)</u>), and/or as advisory, consultative or deliberative material (<u>N.J.S.A. 47:1A-1.1</u>).</p>
6.	December 19, 2006 Executive Session Minutes	Discussion of personnel matters.	OPMA exemption for personnel discussions. <u>N.J.S.A. 10:4-12.b(8)</u> .	<p>1. <u>Paragraph 5 (page 1)</u>: This paragraph should be disclosed.</p> <p>2. <u>Closing paragraph (page 2)</u>: This closing paragraph in the middle of the page, at the end of the "First Session" should be disclosed.</p> <p>3. <u>Closing Paragraph (page 2)</u>: This closing</p>

				<p>paragraph at the bottom of the page should be disclosed.</p> <p>3. All other redactions are proper because the redacted information is exempt from disclosure pursuant to the OPMA exemptions for pending litigation (<u>N.J.S.A. 10:4-12.b(7)</u>) and/or personnel discussions (<u>N.J.S.A. 10:4-12.b(8)</u>).</p>
7.	January 2, 2007 Executive Session Minutes	Discussion of personnel matters.	OPMA exemption for personnel discussions. <u>N.J.S.A. 10:4-12.b(8)</u> .	<p>1. <u>Closing paragraph 4 (page 1)</u>: This closing paragraph at the bottom of the page should be disclosed.</p> <p>2. All other redactions are proper because the redacted information is exempt from disclosure pursuant to OPMA exemption for personnel discussions (<u>N.J.S.A. 10:4-12.b(8)</u>).</p>
8.	January 16, 2007 Executive Session Minutes	Discussion of personnel matters.	OPMA exemption for personnel discussions. <u>N.J.S.A. 10:4-12.b(8)</u> .	This record was previously disclosed in its entirety. No need for the GRC to review this record <i>in camera</i> .

9.	February 6, 2007 Executive Session Minutes	Discussion of personnel matters.	OPMA exemption for personnel discussions. <u>N.J.S.A. 10:4-12.b(8)</u> .	<p>1. <u>Closing paragraph (page 2)</u>: This closing paragraph at the bottom of the page should be disclosed.</p> <p>2. All other redactions are proper because the redacted information is exempt from disclosure pursuant to the OPMA exemptions for pending litigation (<u>N.J.S.A. 10:4-12.b(7)</u>) and personnel discussions (<u>N.J.S.A. 10:4-12.b(8)</u>), and/or as advisory, consultative or deliberative material (<u>N.J.S.A. 47:1A-1.1</u>).</p>
10.	February 20, 2007 Executive Session Minutes	Discussion of personnel matters.	OPMA exemption for personnel discussions. <u>N.J.S.A. 10:4-12.b(8)</u> .	<p>1. <u>First Session - Paragraphs 1 and 2 (page 1)</u>: These two (2) paragraphs should be disclosed.</p> <p>3. <u>First Session - Closing Paragraph (page 2)</u>: This closing paragraph at the top of the page at the end of the "First Session" should be disclosed.</p> <p>2. <u>Second Session - Closing Paragraph and Closing Salutations (page</u></p>

				<p>2): This closing paragraph and the closing salutations should be disclosed.</p> <p>3. All other redactions are proper because the redacted information is exempt from disclosure pursuant to the OPMA exemptions for pending litigation (<u>N.J.S.A. 10:4-12.b(7)</u>) and personnel discussions (<u>N.J.S.A. 10:4-12.b(8)</u>), and/or as advisory, consultative or deliberative material (<u>N.J.S.A. 47:1A-1.1</u>).</p>
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Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations with amendments. A motion was made by Ms. Kovach and seconded by Ms. Forsyth. The motion passed unanimously.

**William McGrath v. NJ Department Law & Public Safety, Division of NJ State Police (2007-153)**

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:

1. The Custodian’s failure to respond in writing to the Complainant’s December 7, 2006 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). *See also* Grauer v. New Jersey Department of Children and Families, GRC Complaint No. 2006-214 (November 2007).



2. Because the Custodian has certified that the records responsive to the Complainant's December 7, 2006 request are a part of Carson Dunbar's New Jersey State Police personnel file and exempt from access pursuant to N.J.S.A. 47:1A-10, and because the Complainant has failed to provide any evidence to contradict the Custodian's certification, the Custodian has met her burden of proof that access to the requested records was not unlawfully denied pursuant to N.J.S.A. 47:1A-6. It is, therefore, unnecessary to further analyze the remainder of the Custodian's assertions for denying access to the records.
3. Because the Custodian certifies that she responded to the Complainant in writing within the statutorily mandated response time indicating that no records responsive to the Complainant's January 18, 2007 OPRA request exist, and because the Complainant has failed to provide any evidence to contradict the Custodian's certification, the Custodian has borne her burden of proving that this denial of access was authorized by law pursuant to N.J.S.A. 47:1A-6 and Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).
4. Because the Complainant's December 7, 2006 and January 18, 2007 OPRA requests are not requests for identifiable government records and because the Custodian is not required to conduct research in response to a request, the requests are invalid and the Custodian has not unlawfully denied access to the requested records 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 (App. Div. 2007) and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
5. Although the Custodian's failure to provide a written response to the Complainant's December 7, 2006 request within the statutorily mandated seven (7) business days resulted in a "deemed" denial, because the Custodian's denial was lawful and the Custodian thus bore her burden of proof, 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. However, the Custodian's unlawful "deemed" denial of access appears negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.

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

**Howard Kupferman v. Township of Long Hill Board of Education (Morris) (2007-213)**

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:

1. The Custodian responded to the Complainant's June 5, 2007 OPRA request on the same business day as receipt of the Complainant's request, stating that no records responsive to the Complainant's OPRA request exist, the Custodian subsequently certified in the Statement of Information that no records which are responsive to the request exist and there is no credible evidence in the record to refute the Custodian's certification. Therefore, the Custodian did not unlawfully deny access to the requested records pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).
2. Pursuant to Shain v. Ocean County Board of Taxation (Ocean), GRC Complaint No. 2007-159 (June 2008), the Custodian did not unlawfully deny access to copies of the invoices requested in the Complainant's August 15, 2007 OPRA request because the invoices were in use by the Long Hill Township Board of Education at the time of the Complainant's request.
3. 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 resignation letter from Mr. DiBenedetto to Ms. Becker and the Custodian dated June 14, 2007, the Schwartz, Simon, Edelstein Celso & Kessler, LLP invoice dated March 15, 2007 and the June 11, 2007 executive session meeting minutes in order to determine the validity of the Custodian's assertion that the redactions constitute information which is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.
4. **The Custodian must deliver<sup>6</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted documents (see No. 3 above), a document or redaction index<sup>7</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4<sup>8</sup>, that the documents provided are the documents requested by the 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.**
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.
6. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

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<sup>6</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>7</sup> The document or redaction index should identify the document and/or each redaction asserted and the lawful basis for the denial.

<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."

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

**Cynthia A. McBride v. Township of Bordentown (Burlington) (2007-217)**

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 because the parties have agreed to a Stipulation of Settlement and Dismissal, signed on July 24, 2009, which Administrative Law Judge Viscomi approved on July 31, 2009, no further adjudication is required.

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

**Alfred Sallie v. NJ Department of Banking & Insurance (2007-226)**

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 because the Complainant has failed to establish in his request for reconsideration of the Council's April 29, 2009 Final Decision 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 rendered an arbitrary, capricious or unreasonable decision, said request 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).

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

**Alfred Sallie v. NJ Department of Banking & Insurance (2007-227)**

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 because the Complainant has failed to establish in his request for reconsideration of the Council's April 29, 2009 Final Decision 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 rendered an arbitrary, capricious or unreasonable decision, said request 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).

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

**Donald Ohlson v. Township of Edison (Middlesex) (2007-233)**

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:

1. The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting additional time to respond within the extended two (2) week time period 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). See Kohn v. Township of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
2. The Custodian certified in the Statement of Information that the Complainant was granted access to inspect the engineering maps responsive to request Items No. 1 through No. 4 and was provided with eight (8) additional records on September 27, 2007. The Custodian subsequently certified that the Complainant inspected the engineering maps on September 2, 2007 and that disclosure of eight (8) additional records on September 27, 2007 represented all records responsive to the Complainant's OPRA request and there is no credible evidence in the record to refute the Custodian's certification. Therefore, while the Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by not granting access within the requested extension of time, she has not unlawfully denied access to the Complainant's July 23, 2007, OPRA request pursuant to Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005).
3. Because the Complainant's OPRA request Items No. 5 through No. 8 seek information rather than a specifically identifiable government record, the request items are invalid pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005).
4. Although the Custodian's failure to respond to the Complainant's OPRA request in writing either granting access, denying access, seeking clarification or requesting additional time respond within the extended two (2) week time period

resulted in a “deemed” denial and the violation of N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i., the Custodian certified that all records responsive to the Complainant’s OPRA request were provided as of September 27, 2007 and request Items No. 5 through No. 8 are invalid requests for information rather than requests for identifiable government records. 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. However, the Custodian’s unlawful “deemed” denial of access appears negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.

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

**Martin O’Shea v. Stillwater Township (Sussex) (2007-253)**

Ms. Starghill reviewed the GRC’s analysis and issues in the case as set forth in the 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 in this complaint delivered to the Council on May 6, 2009 (within five (5) business days from receipt of the Council’s Interim Order) in a sealed envelope nine (9) copies of the requested unredacted documents, a document or redaction index, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4, that the documents provided are the documents requested by the Council for the *in camera* inspection. Therefore, the Custodian has complied with the Council’s April 29, 2009 Interim Order.
2. The *In Camera* Examination set forth in the above table reveals the Custodian has lawfully denied access to, or redacted portions of, the records listed in the document index pursuant to N.J.S.A. 47:1A-6.
3. Although the Custodian’s failure to release all records responsive to the Complainant, failure to provide a document index which identifies the specific lawful basis for the redacted portions of the requested records, failure to amend the Township’s OPRA request form to comply with N.J.S.A. 47:1A-5.f., and failed to provide the Executive Director with certified confirmation of compliance of the November 19, 2008 Interim Order within the ordered five (5) business days, the Custodian did comply with the Council’s April 29, 2009 Interim Order, did properly amend the Township OPRA request form by adopting the GRC Model Request Form, and did properly redact the executive session minutes dated August 21, 2007, September 4, 2007 and October 2, 2007. 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. However, the Custodian’s noncompliance with the Council’s November 19, 2008 Interim Order appears negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.

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

**John Bart v. Passaic County Planning Department, Public Housing Agency (2007-266)**

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 no further adjudication is required because the Complainant notified the GRC in writing on June 25, 2009 that he withdrew this complaint.

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

**Joan McGee v. Township of East Amwell (Hunterdon) (2007-305)**

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

The Executive Director respectfully recommends the Council find:

1. The Custodian in this complaint delivered to the Council on May 8, 2009 (within five (5) business days from receipt of the Council’s Interim Order) in a sealed envelope nine (9) copies of the requested unredacted documents, a document or redaction index, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4, that the documents provided are the documents requested by the Council for the *in camera* inspection. Therefore, the Custodian has complied with the Council’s April 29, 2009 Interim Order.
2. **On the basis of the Council’s determination in this matter, the Custodian shall comply with the Council’s Findings of the *In Camera* Examination set forth in the table below within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005) to the Executive Director.**

Record or Redaction Number	Record Name/Date	Description of Record or Redaction	Custodian’s Explanation/ Citation for Non-disclosure or Redactions	Findings of the <i>In Camera</i> Examination <sup>9</sup>

<sup>9</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

1.	E-mail from Barbara Wolfe to Richard Cushing dated January 2, 2007 10:04 a.m.	Title: RE: Status of Things	Information exempt from disclosure pursuant to the attorney-client privilege for pending litigation pursuant to <u>N.J.S.A.</u> 47:1A-1.1 and personnel matters pursuant to <u>N.J.S.A.</u> 47:1A-10 involving the Complainant.	Disclose this e-mail with redactions for home telephone number, home fax number, cell phone number, and home address which are exempt because of privacy concerns pursuant to <u>N.J.S.A.</u> 47:1A-1.
2.	E-mail from Barbara Wolfe to Richard Cushing and Eric Harrison dated January 12, 2007 9:40 p.m.	Titled: Joan Confidential	Information exempt from disclosure pursuant to the attorney-client privilege for pending litigation pursuant to <u>N.J.S.A.</u> 47:1A-1.1 and personnel matters pursuant to <u>N.J.S.A.</u> 47:1A-10 involving the Complainant.	This e-mail is exempt from disclosure because its contents are exempt as advisory, consultative or deliberative material pursuant to <u>N.J.S.A.</u> 47:1A-1.1 and <u>N.J.S.A.</u> 47:1A-10 as personnel matters.

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.

3.	E-mail from Barbara Wolfe to Richard Cushing and Eric Harrison dated January 12, 2007 9:40 a.m.	Titled: Joan Confidential <sup>10</sup>	Information exempt from disclosure pursuant to the attorney-client privilege for pending litigation pursuant to <u>N.J.S.A. 47:1A-1.1</u> and personnel matters pursuant to <u>N.J.S.A. 47:1A-10</u> involving the Complainant.	This e-mail is exempt from disclosure because its contents are exempt as advisory, consultative or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> and <u>N.J.S.A. 47:1A-10</u> as personnel matters.
4.	E-mail from Timothy Matheny to Barbara Wolfe (with copies to Richard Cushing, Esq., Don Reily, Lary Tatsch, and Fred Gardner) dated January 15, 2007 9:38 p.m.	Titled: Check List, etc.	Information exempt from disclosure pursuant to the attorney-client privilege for pending litigation pursuant to <u>N.J.S.A. 47:1A-1.1</u> and personnel matters pursuant to <u>N.J.S.A. 47:1A-10</u> involving the Complainant.	This e-mail is exempt from disclosure because its contents are exempt as advisory, consultative or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> and <u>N.J.S.A. 47:1A-10</u> as personnel matters.
5.	E-mail from Don Reily to Timothy Matheny (with copies to Lary Tatsch, Fred Gardner,	Title: RE: Check List, etc.	Information exempt from disclosure pursuant to the attorney-client privilege for pending	This e-mail is exempt from disclosure because its contents are exempt under the attorney-client privilege pursuant

<sup>10</sup> This e-mail is different from the e-mail above it (#3.) despite the fact that both have the same date and time.



	Barbara Wolfe and Richard Cushing) dated January 16, 2007 8:46 a.m.		litigation pursuant to <u>N.J.S.A.</u> 47:1A-1.1 and personnel matters pursuant to <u>N.J.S.A.</u> 47:1A-10 involving the Complainant.	to <u>N.J.S.A.</u> 47:1A-1.1.
6.	E-mail from Barbara Wolfe to Timothy Matheny (with copies to Richard Cushing, Don Reily, Lary Tatsch, and Fred Gardner) dated January 16, 2007 9:56 a.m.	Titled: RE: Check List, etc.	Information exempt from disclosure pursuant to the attorney-client privilege for pending litigation pursuant to <u>N.J.S.A.</u> 47:1A-1.1 and personnel matters pursuant to <u>N.J.S.A.</u> 47:1A-10 involving the Complainant.	This e-mail is exempt from disclosure because its contents are exempt as advisory, consultative or deliberative material pursuant to <u>N.J.S.A.</u> 47:1A-1.1 and <u>N.J.S.A.</u> 47:1A-10 as personnel matters.
7.	E-mail from Fred Gardner to Barbara Wolfe, Timothy Matheny and Richard Cushing (with copies to Don Reily and Lary Tatsch) dated January 16, 2007 6:50 p.m.	Title: RE: Check List, etc.	Information exempt from disclosure pursuant to the attorney-client privilege for pending litigation pursuant to <u>N.J.S.A.</u> 47:1A-1.1 and personnel matters pursuant to <u>N.J.S.A.</u> 47:1A-10 involving the	This e-mail is exempt from disclosure because its contents are exempt as advisory, consultative or deliberative material pursuant to <u>N.J.S.A.</u> 47:1A-1.1 and <u>N.J.S.A.</u> 47:1A-10 as personnel matters.

			Complainant.	
8.	E-mail from Barbara Wolfe to Fred Gardner, Timothy Matheny and Richard Cushing (with copies to Don Reily and Lary Tatsch) dated January 16, 2007 7:23 p.m.	Title: RE: Check List, etc.	Information exempt from disclosure pursuant to the attorney-client privilege for pending litigation pursuant to <u>N.J.S.A.</u> 47:1A-1.1 and personnel matters pursuant to <u>N.J.S.A.</u> 47:1A-10 involving the Complainant.	This e-mail is exempt from disclosure because its contents are exempt as advisory, consultative or deliberative material pursuant to <u>N.J.S.A.</u> 47:1A-1.1 and <u>N.J.S.A.</u> 47:1A-10 as personnel matters.
9.	E-mail from Fred Gardner to Barbara Wolfe, Richard Cushing, Lary Tatsch, Don Reily, and Timothy Matheny dated January 16, 2007 9:46 p.m.	Title: RE: Check List, etc.	Information exempt from disclosure pursuant to the attorney-client privilege for pending litigation pursuant to <u>N.J.S.A.</u> 47:1A-1.1 and personnel matters pursuant to <u>N.J.S.A.</u> 47:1A-10 involving the Complainant.	Disclose the first (1 <sup>st</sup> ) paragraph. The remainder of this e-mail is exempt from disclosure because its contents are exempt as advisory, consultative or deliberative material pursuant to <u>N.J.S.A.</u> 47:1A-1.1 and <u>N.J.S.A.</u> 47:1A-10 as personnel matters.
10.	E-mail from Don Reily to Fred Gardner (with copies to Lary Tatsch, Timothy Matheny, Barbara Wolfe	Title: RE: Check List, etc.	Information exempt from disclosure pursuant to the attorney-client privilege for pending litigation	This e-mail is exempt from disclosure because its contents are exempt as advisory, consultative or deliberative

	and Richard Cushing) dated January 17, 2007 9:00 a.m.		pursuant to <u>N.J.S.A.</u> 47:1A-1.1 and personnel matters pursuant to <u>N.J.S.A.</u> 47:1A-10 involving the Complainant.	material pursuant to <u>N.J.S.A.</u> 47:1A-1.1 and <u>N.J.S.A.</u> 47:1A-10 as personnel matters.
11.	E-mail from Don Reily to Lary Tatsch (with copies to Lary Tatsch, Fred Gardner, Timothy Matheny, Barbara Wolfe and Richard Cushing) dated January 18, 2007 8:09 a.m.	Title: RE: Check List, etc.	Information exempt from disclosure pursuant to the attorney-client privilege for pending litigation pursuant to <u>N.J.S.A.</u> 47:1A-1.1 and personnel matters pursuant to <u>N.J.S.A.</u> 47:1A-10 involving the Complainant.	This e-mail is exempt from disclosure because its contents are exempt as personnel matters pursuant to <u>N.J.S.A.</u> 47:1A-10.
12.	E-mail from Timothy Matheny to Lary Tatsch and Don Reily (with copies to Fred Gardner, Barbara Wolfe, and Richard Cushing) dated January 18, 2007 11:47 a.m.	Title: RE: Check List, etc.	Information exempt from disclosure pursuant to the attorney-client privilege for pending litigation pursuant to <u>N.J.S.A.</u> 47:1A-1.1 and personnel matters pursuant to <u>N.J.S.A.</u> 47:1A-10 involving the Complainant.	This e-mail is exempt from disclosure because its contents are exempt as personnel matters pursuant to <u>N.J.S.A.</u> 47:1A-10.

13.	E-mail from Fred Gardner to Timothy Matheny, Lary Tatsch, and Don Reily (with copies to Barbara Wolfe and Richard Cushing) dated January 18, 2007 4:12 p.m.	Title: RE: Check List, etc.	Information exempt from disclosure pursuant to the attorney-client privilege for pending litigation pursuant to <u>N.J.S.A.</u> 47:1A-1.1 and personnel matters pursuant to <u>N.J.S.A.</u> 47:1A-10 involving the Complainant.	This e-mail is exempt from disclosure because its contents are exempt as personnel matters pursuant to <u>N.J.S.A.</u> 47:1A-10.
14.	E-mail from Richard Cushing to Don Reily and Lary Tatsch (with copies to Lary Tatsch, Fred Gardner, Timothy Matheny and Barbara Wolfe) dated January 19, 2007 5:17 p.m.	Title: RE: Check List, etc.	Information exempt from disclosure pursuant to the attorney-client privilege for pending litigation pursuant to <u>N.J.S.A.</u> 47:1A-1.1 and personnel matters pursuant to <u>N.J.S.A.</u> 47:1A-10 involving the Complainant.	This e-mail is exempt from disclosure because its contents are exempt under the attorney-client privilege pursuant to <u>N.J.S.A.</u> 47:1A-1.1.
15.	E-mail from Barbara Wolfe to Timothy Matheny (with copy to Richard Cushing) dated January 20, 2007 9:29 a.m.	Title: RE: Check List, etc.	Information exempt from disclosure pursuant to the attorney-client privilege for pending litigation	This e-mail is exempt from disclosure because its contents are exempt as personnel matters pursuant to <u>N.J.S.A.</u> 47:1A-

			<p>pursuant to <u>N.J.S.A.</u> 47:1A-1.1 and personnel matters pursuant to <u>N.J.S.A.</u> 47:1A-10 involving the Complainant.</p>	10.
16.	<p>E-mail from Richard Cushing to Barbara Wolfe and Timothy Matheny dated January 20, 2007 12:17 p.m.</p>	<p>Title: RE: Check List, etc.</p>	<p>Information exempt from disclosure pursuant to the attorney-client privilege for pending litigation pursuant to <u>N.J.S.A.</u> 47:1A-1.1 and personnel matters pursuant to <u>N.J.S.A.</u> 47:1A-10 involving the Complainant.</p>	<p>This e-mail is exempt from disclosure because its contents are exempt under the attorney-client privilege pursuant to <u>N.J.S.A.</u> 47:1A-1.1.</p>
17.	<p>E-mail from Barbara Wolfe to Richard Cushing and Timothy Matheny dated January 20, 2007 3:13 p.m.</p>	<p>Title: RE: Check List, etc.</p>	<p>Information exempt from disclosure pursuant to the attorney-client privilege for pending litigation pursuant to <u>N.J.S.A.</u> 47:1A-1.1 and personnel matters pursuant to <u>N.J.S.A.</u> 47:1A-10 involving the Complainant.</p>	<p>This e-mail is exempt from disclosure because its contents are exempt under the attorney-client privilege pursuant to <u>N.J.S.A.</u> 47:1A-1.1.</p>

18.	E-mail from Barbara Wolfe to Don Reily dated January 25, 2007 7:24 p.m.	Title: Fw: COAH Rules	Information exempt from disclosure pursuant to the attorney-client privilege for pending litigation pursuant to <u>N.J.S.A.</u> 47:1A-1.1 and personnel matters pursuant to <u>N.J.S.A.</u> 47:1A-10 involving the Complainant.	This e-mail is not exempt from disclosure. Disclose entire e-mail.
19.	E-mail from Don Reily to Barbara Wolfe dated January 25, 2007 8:30 p.m.	Title: Re: COAH Rules	Information exempt from disclosure pursuant to the attorney-client privilege for pending litigation pursuant to <u>N.J.S.A.</u> 47:1A-1.1 and personnel matters pursuant to <u>N.J.S.A.</u> 47:1A-10 involving the Complainant.	This e-mail is not exempt from disclosure. Disclose entire e-mail.

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

**Alfred Sallie v. NJ Department of Law & Public Safety, Division of Criminal Justice (2008-21)**

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 because the Custodian disclosed all of the records responsive to the Complainant's request, irrespective of their disclosure in response to any previous OPRA request(s), and because the Custodian provided certified confirmation of compliance, pursuant to N.J. Court Rule 1:4-4, to the Executive Director within five (5) business days of receiving the Council's June 23, 2009 Interim Order, the Custodian has complied with the terms of said Order.

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

**John Bentz v. Borough of Paramus Police Department (Bergen) (2008-25)**

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

The Executive Director respectfully recommends the Council find:

1. While the Custodian properly requested an extension of time within the seven (7) business day deadline provided by OPRA, the Custodian failed to grant access, deny access, seek clarification or request an extension by January 3, 2008. Therefore, 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 by January 3, 2008 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).
2. Although the Custodian's failure to either grant access, deny access, seek clarification or request an extension of time by January 3, 2008 resulted in a "deemed" denial of the Complainant's OPRA request, because the Custodian provided the Complainant with the requested record as soon as the record became available, 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. However, the Custodian's unlawful "deemed" denial of access appears negligent and heedless since he is vested with the legal responsibility of granting and denying access in accordance with the law.

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

**Arthur Carlomagno v. Borough of Northvale (Bergen) (2008-32)**

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:

1. Although the majority of the audio recording for the requested meeting does not exist, the Custodian certified that a recording of the last few minutes of said meeting does exist. The Custodian should have provided the Complainant access to the portion of the audio recording that does exist, however incomplete. As such, the Custodian has not borne her burden of proving a lawful denial of access, pursuant to N.J.S.A. 47:1A-6, to the audio recording of the Council's January 10, 2007 meeting. However, the Council declines to order disclosure of said recording because the Custodian provided same to the Complainant in response to his second OPRA request.
2. Although the Custodian provided the Complainant with an audio recording in response to his request, the Complainant's OPRA request dated August 9, 2007 does not identify with reasonable clarity a specific government record. As such said request is invalid and the Custodian has not unlawfully denied access to the requested records 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 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
3. Although the Custodian unlawfully denied access to the portion of the audio recording of the Council's January 10, 2007 meeting that does exist, the Custodian made additional records available to the Complainant even though she is not required to do so under OPRA. 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. However, the Custodian's unlawful denial of access to the portion of the audio recording of the Council's January 10, 2007 meeting that does exist appears negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.

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

**Warren Lackland v. NJ Department of Law & Public Safety, State Ethics Commission (2008-66)**

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

The Executive Director respectfully recommends the Council find because the requested record is part of the investigative file of the State Ethics Commission, and



because the Commission has determined that the Complainant does not have a particularized need for the requested record, the requested record is exempt from disclosure under OPRA by the State Ethics Commission's regulations at *N.J.A.C.* 19:61-3(c)(2) and N.J.S.A. 47:1A-9.a.

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

**Tina Renna v. Union County Improvement Authority (Union) (2008-86)**

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

The Executive Director respectfully recommends the Council find:

1. The Custodian has complied with the Council's March 25, 2009 Interim Order by providing the Council with all records set forth in Paragraph 3 of the Order within five (5) business days of receiving the Council's Order.
2. **On the basis of the Council's determination in this matter, the Custodian shall comply with the Council's Findings of the *In Camera* Examination set forth in the above table within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance, pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005), to the Executive Director.**

<b>Record or Redaction Number</b>	<b>Record Name/Date</b>	<b>Description of Record or Redaction</b>	<b>Custodian's Explanation/ Citation for Non-disclosure or Redactions</b>	<b>Findings of the <i>In Camera</i> Examination<sup>11</sup></b>
1.	DeCotiis, FitzPatrick, Cole & Wisler, LLP invoice #94103 dated	All posting dates, descriptions and hours were redacted.	The redactions were made so as not to reveal details of matters	The entire invoice must be disclosed <b><u>except</u></b> for the following information which

<sup>11</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.

	December 10, 2007		protected by the attorney-client privilege and/or relating to personnel matters and on-going investigation.	<p>is exempt from disclosure under the attorney-client privilege pursuant to <u>N.J.S.A. 47:1A-1.1</u> as this information may reveal litigation strategy:</p> <p><b>(1) <u>Under work performed by AMP (page 1),</u></b> entire description for the 11/12/07 entry;</p> <p><b>(2) <u>Under work performed by GAB (page 2),</u></b> the entire description for the third (3<sup>rd</sup>) 11/05/07 entry;</p> <p><b>(3) <u>Under work performed by GAB (page 3),</u></b> the entire description for the third (3<sup>rd</sup>) 11/13/07 entry;</p> <p><b>(4) <u>Under work performed by GAB (page 3),</u></b> the entire description for the second (2<sup>nd</sup>) 11/14/07 entry;</p> <p><b>(5) <u>Under work performed by GAB (page 4),</u></b> the part of the description after the first (1<sup>st</sup>) semicolon and before the second (2<sup>nd</sup>) semicolon for the second (2<sup>nd</sup>) 11/16/07 entry;</p> <p><b>(6) <u>Under work performed by JLW (page 5),</u></b> the</p>
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				<p>part of the description before the first (1<sup>st</sup>) semicolon for the 11/14/07 entry;  <b>(7) <u>Under work performed by JLW (page 5)</u></b>, the part of the description after the first (1<sup>st</sup>) semicolon for the 11/16/07 entry;  <b>(8) <u>Under work performed by JLW (page 5)</u></b>, the entire description for the 11/19/07 entry; and  <b>(9) <u>Under work performed by WRL (page 6)</u></b>, the entire description for the 11/30/07 entry.</p>
2.	DeCotiis, FitzPatrick, Cole & Wisler, LLP invoice #95354 dated January 22, 2008	All posting dates, descriptions and hours were redacted.	The redactions were made so as not to reveal details of matters protected by the attorney-client privilege and/or relating to personnel matters and on-going investigation.	<p>The entire invoice must be disclosed <b><u>except</u></b> for the following information which are exempt from disclosure under the attorney-client privilege pursuant to <u>N.J.S.A. 47:1A-1.1</u> as this information may reveal litigation strategy:  <b>(1) <u>Under work performed by GAB (page 2)</u></b>, the part of the description after “matters” and before the period for the fourth (4<sup>th</sup>) 12/7/07 entry [last</p>

				<p>entry on the page];</p> <p><b>(2) <u>Under work performed by GAB (page 3)</u></b>, the entire description for the 12/7/07 entry;</p> <p><b>(3) <u>Under work performed by JLW (page 5)</u></b>, the entire description for the two (2) 11/29/07 entries;</p> <p><b>(4) <u>Under work performed by JLW (page 5)</u></b>, the part of the description before the first (1<sup>st</sup>) semicolon and the part of the description after the second (2<sup>nd</sup>) semicolon for the 12/10/07 entry;</p> <p><b>(5) <u>Under work performed by JLW (page 5)</u></b>, the part of the description before the first (1<sup>st</sup>) semicolon for the 12/11/07 entry;</p> <p><b>(6) <u>Under work performed by JLW (page 5)</u></b>, the part of the description after the second (2<sup>nd</sup>) semicolon for the 12/12/07 entry;</p> <p><b>(7) <u>Under work performed by WRL (page 5)</u></b>, the entire descriptions for all of the entries.</p>
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Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Kovach and seconded by Ms. Forsyth. The motion passed unanimously.

**Allan Johnson v. Borough of Oceanport (Monmouth) (2008-141)**

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 based on the contested facts in this complaint, the GRC is unable to determine whether the Custodian and Councilman Sharkey fully complied with OPRA. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts, for a determination of whether the Custodian failed to provide all records responsive in her possession at the time of the Complainant's November 28, 2006 and December 4, 2006 OPRA requests, and whether Councilman Sharkey failed to initially provide a response at the time of the Complainant's November 28, 2006 and December 4, 2006 OPRA requests, and, if so, whether such failure was a knowing and willful violation of OPRA and an 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. Kovach and seconded by Ms. Forsyth. The motion passed unanimously.

**Arthur Muglia v. NJ Department of Corrections (2008-148)**

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

The Executive Director respectfully recommends the Council find:

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).
2. Because the record requested is a Special Investigation Division record that cannot be safely redacted and disclosed, the record requested by the Complainant falls within the exemption stated in *N.J.A.C. 10A:1-1.4* through *31-6.13*, PRN 2002-228, July 1, 2002. Therefore, pursuant to N.J.S.A. 47:1A-9.a., Executive Order No. 26, and *N.J.A.C. 10A:1-1.4* through *31-6.13* of the New Jersey Department of Corrections Proposed Amendments, which contains a clear exemption from disclosure of Special Investigation Division records when redactions alone would be insufficient to ensure the safety of any person or the safe and secure operation of a correctional facility, the Custodian has borne her burden of proving that the requested Special Investigation Division record is

exempt from disclosure. Accordingly, the Custodian has not unlawfully denied the Complainant access to the record requested.

3. 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, 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 because the Complainant did not have a lawful right of access to the requested record. However, the Custodian's unlawful "deemed" denial of access appears negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.

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

**Divya Srivastav-Seth v. NJ Department of Banking & Insurance, Division of Small Employer Health Program Board (2008-152)**

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:

1. 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 internal memorandum distributed to Small Employee Health Benefits Board members at the June 18, 2008 meeting in order to determine the validity of the Custodian's assertion that the record constitutes inter-agency or intra-agency advisory, consultative and deliberative information which is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.
2. **The Custodian must deliver<sup>12</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted document (see No. 1 above), a document or redaction index<sup>13</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4<sup>14</sup>, that the document provided is the document requested by the 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.**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the

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<sup>12</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>13</sup> The document or redaction index should identify the document and/or each redaction asserted and the lawful basis for the denial.

<sup>14</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."

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. Kovach and seconded by Ms. Forsyth. The motion passed unanimously.

**James Cody v. Middletown Board of Education (Monmouth) (2008-162)**

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

The Executive Director respectfully recommends the Council find that pursuant to 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), Bart v. Passaic County Public Housing Agency, 406 N.J. Super. 445 (App. Div. 2009) and Donato v. Township of Union, GRC Complaint No. 2005-182 (January 2007), the Complainant's OPRA request is invalid under OPRA because it is a broad general request for records and would require the Custodian to conduct research to discern which records may be responsive to the Complainant's OPRA request. Accordingly, the Custodian has not unlawfully denied the Complainant access to the records requested. However, the Custodian was erroneous in asserting that OPRA exempts from disclosure government records that relate to a matter in litigation or in anticipation of litigation, as OPRA contains no such exemption.

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

**Christopher White v. William Paterson University (2008-216)**

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:

1. The Custodian has lawfully denied access to the Complainant's OPRA request for a copy of an unredacted audiotape of a disciplinary hearing held in January, 2003 because the unredacted audiotape is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1. and C.W. v. William Patterson University, GRC Complaint No. 2003-80 (March 2005).
2. Because the Complainant failed to submit any new evidence in support of his request for reconsideration, namely 1) that 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 do so. The Complainant has also failed to show that the GRC acted arbitrarily, capriciously or unreasonably in disposing of the complaint, the Complainant's request for reconsideration of the Council's decision in C.W. v. William Patterson

University, GRC Complaint No. 2003-80 (March 2005), and that the GRC reconsider all complaints dealing with any conflicts between OPRA and the Family Educational Rights and Privacy Act, is therefore denied.

3. The identity of a requestor is not a consideration when deciding whether an exemption applies to a government record requested pursuant to OPRA except for those instances set forth at N.J.S.A. 47:1A-2.2. and N.J.S.A. 47:1A-10.

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

**Eric Taylor v. Cherry Hill Board of Education (Camden) (2008-258)**

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:

1. The Custodian's failure to respond in writing to the Complainant's OPRA request regarding the requested meeting minutes either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days and failure to respond within the extended twenty-one (21) day time frame regarding the other requested records 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). *See also* Kohn v. Township of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
2. Although the Custodian failed to respond in writing to the Complainant's OPRA request within the statutorily mandated time frame or within the extended response time frame, the Custodian did respond to the Complainant on December 31, 2008, stating that no receipts, invoices or contracts responsive had been located, and subsequently certified in the Statement of Information that no receipts, invoices, contracts or meeting minutes from 1975 to the present exist which are responsive to the request relevant to this complaint and there is no credible evidence in the record to refute the Custodian's certification. Therefore, while the Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i., he did not unlawfully deny access to the requested receipts, invoices and meeting minutes from 1975 to present pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).
3. Because the Custodian has a duty to safeguard the integrity of government records and because the Custodian expressed the fragility of the meeting minutes as an issue at the time of his response to the Complainant, providing inspection is a reasonable alternative to compromising the integrity of fragile records and the Custodian's offer of inspection of the meeting minutes from 1925 to 1975 is lawful pursuant to Hascup v. Waldwick Board of Education, GRC Complaint No. 2005-192 (April 2007).



4. Although the Complainant identified types of records in his OPRA request items No. 3 and No. 4, the requests failed to specify the dates of particular meeting minutes sought; the Custodian is not required to conduct research in response to a request pursuant to Donato v. Township of Union, GRC Complaint No. 2005-182 (February 2007). As such, the Complainant's requests are invalid under OPRA and the Custodian has not unlawfully denied access to the requested records pursuant to 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 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 2008). *See also* Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2008-70 and 2008-71 (February 2009).
5. 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 and the Custodian failed to respond to the OPRA request on the expiration of the extension of time, because the Custodian responded in writing on December 31, 2008 stating that no records responsive exist, subsequently certified in the Statement of Information that no records responsive exist and lawfully provided the opportunity for inspection of the meeting minutes from 1925 to 1975 due to the fragility of the records and the Custodian's desire to safeguard the records, 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. However, the Custodian's unlawful "deemed" denial of access appears negligent and heedless since he is vested with the legal responsibility of granting and denying access in accordance with the law.
6. 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. This complaint did not bring about a change (voluntary or otherwise) in the Custodian's conduct. Specifically, the Custodian lawfully provided inspection of the requested meeting minutes from 1925 to 1975 and certified in the Statement of Information that no receipts, invoices, contracts or meeting minutes from 1975 to the present which are responsive to the Complainant's OPRA request exist. Additionally, using the catalyst theory, there is no factual causal nexus between the filing of the Complainant's Denial of Access Complaint and the Custodian's technical violation of OPRA and subsequent Statement of Information certification.

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

**Jacqueline Andrews v. Township of Irvington (Essex) (2009-39)**

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:

1. Because the Custodian failed to disclose to the Complainant the records ordered for disclosure pursuant to the terms of the Council's June 11, 2009 Interim Order, and because the Custodian has failed to provide to the GRC certified confirmation of compliance with the Council's Order in accordance with N.J. Court Rule 1:4-4, the Custodian has not complied with the terms of the Council's June 11, 2009 Interim Order and is therefore in contempt of said Order.
2. Because the Custodian failed to disclose to the Complainant the records ordered for disclosure pursuant to the terms of the Council's June 11, 2009 Interim Order, the GRC shall immediately commence an enforcement proceeding in New Jersey Superior Court against the Custodian in accordance with N.J. Court Rule 4:67-6.
3. Based on the evidence of record, it is possible that the Custodian's actions were intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. As such, this complaint should be referred to the Office of Administrative Law for a determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances. This matter will be transmitted to the Office of Administrative Law after the enforcement proceeding concludes.

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

**Robert Diaz v. Township of South Harrison (Gloucester) (2009-171)**

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:

1. 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 record relevant to the complaint in order to determine the validity of the assertion by Custodian's Counsel that the record constitutes advisory, consultative or deliberative material which is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.
2. **The Custodian must deliver<sup>15</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted documents (see No. 1 above), a document**

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<sup>15</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.

or redaction index<sup>16</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,<sup>17</sup> that the documents provided are the documents requested by the 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.

3. The Council defers analysis of whether the Custodian and/or Mayor Campbell knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending 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. Kovach and seconded by Ms. Forsyth. The motion passed unanimously.

**Complaints on Appeal:** None.

**Complaints Adjudicated on NJ Superior Court & NJ Supreme Court:**

1. Louis Toscano v. NJ Department of Labor, Division of Vocational Rehabilitation Services (GRC Complaint No. 2007-296), App.Div., Docket No. A-4410-07T3, Complainant withdrew.

**Executive Director's Report and New Business:** The Executive Director reminded the Council members that they received copies of correspondence from Mr. O'Shea and Mr. Paff and asked the members if there were any questions or concerns with the GRC's response to either. There were none.

**Public Comment:** None.

A motion to end the Council's meeting was made by Ms. Kovach and seconded by Ms. Forsyth. The motion passed unanimously.

Meeting adjourned at 12:25 p.m.

Respectfully submitted,

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Robin Berg Tabakin, Chairwoman

Date Approved:

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<sup>16</sup> The document or redaction index should identify the document and/or each redaction asserted and the lawful basis for the denial.

<sup>17</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."