



Minutes of the Government Records Council December 22, 2009 Public Meeting – Open Session

The meeting was called to order at 9:49 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, Harlynn Lack (designee of Department of Community Affairs Acting Commissioner Charles Richman), Kathryn Forsyth (designee of Department of Education Commissioner Lucille Davy, and Janice Kovach (previous designee of Department of Community Affairs Acting Commissioner Charles Richman for the sole purpose of voting on the November 4, 2009 meeting minutes).

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, and Designated Outside Counsel Gina Orosz.

Ms. Tabakin read the Resolution for Closed Session (Resolution Number 2009-12-22) 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. Larry Kohn v. Township of Livingston (Essex) (2007-323) ***In-Camera***
2. Frank Amoresano v. Rowan University (2008-168)
3. Tina Renna v. County of Union (2008-217) ***In-Camera***
4. Jesse Wolosky v. Township of Frankford (Sussex) (2008-254) ***In-Camera***
5. Anonymous v. Franklin Township Fire District #1 (Somerset) (2008-257) ***In-Camera***
6. Jesse Wolosky v. Township of Frankford (Sussex) (2008-278) ***In-Camera***

A motion was made to go into closed session by Ms. Lack and seconded by Ms. Forsyth to go into closed session. The motion was adopted by a unanimous vote. A motion was made by Ms. Lack 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 10:20 a.m.

Open Session reconvened at 10:30 a.m. and Ms. Hairston called roll.

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

A motion was made by Ms. Kovach and seconded by Ms. Forsyth to approve the amended open session minutes of the November 4, 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 November 4, 2009 meeting. The motion passes by an unanimous vote.

A motion was made by Ms. Lack and seconded by Ms. Forsyth to approve the open session minutes of the November 18, 2009 meeting. The motion passes by an unanimous vote.

Council Adjudication:

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

1. Jacquie Zuvich v. Borough of Metuchen (Middlesex) (2009-51)
2. Joseph Augustyn v. NJ Department of Treasury (2009-246)
3. Paul Altruda v. NJ Department of Human Services, Division of Developmental Disabilities (2009-260)
4. John Paff v. Township of Stow Creek (Cumberland) (2009-280)
5. David Weiner v. County of Essex (2009-282)
6. Carol Benson v. Seaside Park Board of Education (Ocean) (2009-287)
7. Richard Rivera v. City of Atlantic City, Police Department (Atlantic) (2009-288)
8. Harry D Boonin v. City of Atlantic City (Atlantic) (2009-292)
9. Harry D Boonin v. Office of the Atlantic County Prosecutor's Office (2009-293)
10. Rahim Caldwell v. Vineland Board of Education (Cumberland) (2009-301)
11. Robert Barush v. NJ Office of the Governor (2009-304)
12. Jay Thomas v. Ramapo College of NJ (2009-316)
13. Daniel Gatson v. NJ Administrative Office of the Courts (2009-320)

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

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

1. James D'Andrea v. NJ Department of Community Affairs, Division of Local Government Services (2007-64)
2. William Gettler v. Wantage Regional Schools, Board of Education (Sussex) (2007-105)

3. Joyce Blay v. Jackson Board of Education (Ocean) (2007-177)
4. John Paff v. Borough of Lavallette (Ocean) (2007-209)
5. David Hinchcliffe v. NJ Department of Community Affairs, Division of Local Government Services (2007-306)
6. John Bentz v. Borough of Paramus (Bergen) (2008-89)
7. J.C. v. NJ Department of Education, Deputy Commissioner's Office (2008-91)
8. Robert Verry v. Borough of South Bound Brook (Somerset) (2008-161)
9. Gertrude Casselle v. NJ Department of Community Affairs, Division of Community Resources (2008-248)
10. Ursula Cargill v. NJ Department of Education (2009-9)
11. Ursula Cargill v. State Ethics Commission (2009-10)
12. James Sage v. County of Monmouth Board of Chosen Freeholders (2009-43)

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

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 Supplemental Findings and Recommendations of the Executive Director. Ms. Caruso presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find:

1. Because the Custodian provided the resignation letter of Mr. DiBenedetto dated June 14, 2007 omitting the second (2nd) redaction to the Complainant as required by the Council's Interim Order, 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 Interim Order, the Custodian has complied with the Council's November 4, 2009 Interim Order.
2. Although the Custodian unlawfully denied access to the information contained within the second (2nd) redaction of the resignation letter of Mr. DiBenedetto and the first (1st) 02/21/07 NC entry on page 1 of the attorney invoices, because the Custodian complied with the Council's Interim Orders dated August 11, 2009 and November 4, 2009, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. 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.
3. 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. 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. Lack and seconded by Ms. Forsyth. The motion passed unanimously.

Beverly Jones v. Trenton Board of Education (Mercer) (2007-282)

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 this complaint should be dismissed because both parties failed to appear before the Office of Administrative Law at a scheduled proceeding on November 10, 2009 and neither party provided the GRC with an explanation of their failure to appear in accordance with *N.J.A.C. 1:1-18.4* of the Administrative Procedures Code.

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. Lack. The motion passed unanimously.

Larry Kohn v. Township of Livingston (Essex) (2007-323)

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

The Executive Director respectfully recommends the Council find:

1. The Custodian timely complied with the Council's September 30, 2009 Interim Order.
2. The *In Camera* Examination set forth in the table below reveals the Custodian unlawfully denied access to the requested records pursuant to N.J.S.A. 47:1A-6.
3. **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.**
4. The Council defers its analysis regarding any knowing and willful violation of OPRA pending the Custodian's compliance with this Interim Order.

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 ¹
Record # 1 Purchase Order #4-541 (1 page)	Purchase Order of Concrete Construction Corp., dated 6/22/2004	Record withheld from disclosure in its entirety.	This record is associated with the Hillside Avenue Construction project which became the subject of ongoing litigation. Therefore, access to this record denied because said record is deemed confidential due to pending litigation pursuant to <u>N.J.S.A. 47:1A-1.1.</u>	The record contains neither attorney work product nor materials produced in anticipation of litigation. The record is a purchase order containing factual information. As such, this record is not exempt from disclosure under OPRA.

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

<p>Record #2 Purchase Order No. 05-0984 (1 page)</p>	<p>Purchase Order of Jarmel Kizel Architects/Engineers, Inc., dated 3/24/2005</p>	<p>Record withheld from disclosure in its entirety.</p>	<p>This record is associated with the Hillside Avenue Construction project which became the subject of ongoing litigation. Therefore, access to this record denied because said record is deemed confidential due to pending litigation pursuant to <u>N.J.S.A. 47:1A-1.1.</u></p>	<p>The record contains neither attorney work product nor materials produced in anticipation of litigation. The record is a purchase order containing factual information. As such, this record is not exempt from disclosure under OPRA.</p>
<p>Record No. 3 Purchase Order No. 07-01095 (1 page)</p>	<p>Purchase Order of Peter M. Jacovino & Son, Inc., dated 3/28/2007</p>	<p>Record withheld from disclosure in its entirety.</p>	<p>This record is associated with the Hillside Avenue Construction project which became the subject of ongoing litigation. Therefore, access to this record denied because said record is deemed confidential due to pending litigation pursuant to <u>N.J.S.A. 47:1A-1.1.</u></p>	<p>The record contains neither attorney work product nor materials produced in anticipation of litigation. The record is a purchase order containing factual information. As such, this record is not exempt from disclosure under OPRA.</p>

<p>Record #5 Memorandum dated December 12, 2006 (2 pages)</p>	<p>Memorandum dated 12/12/2006 from R. Jones to S. Strande re: Allocate Funds</p>	<p>Record withheld from disclosure in its entirety.</p>	<p>This record is associated with the Hillside Avenue Construction project which became the subject of ongoing litigation. Therefore, access to this record denied because said record is deemed confidential due to pending litigation pursuant to <u>N.J.S.A. 47:1A-1.1.</u></p>	<p>The record contains neither attorney work product nor materials produced in anticipation of litigation. The record is a memorandum containing factual information. As such, this record is not exempt from disclosure under OPRA.</p>
<p>Record #6 Purchase Order for U.S. Bank Nat'l Assoc. Feb WIT (1 page)</p>		<p>Record withheld from disclosure in its entirety.</p>	<p>This record is associated with the Hillside Avenue Construction project which became the subject of ongoing litigation. Therefore, access to this record denied because said record is deemed confidential due to pending litigation pursuant to <u>N.J.S.A. 47:1A-1.1.</u></p>	<p>The record contains neither attorney work product nor materials produced in anticipation of litigation. The record is a purchase order containing factual information. As such, this record is not exempt from disclosure under OPRA.</p>

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. Lack. The motion passed unanimously.

Ronald Greco v. Borough of Fanwood (Union) (2008-147)

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 has revised the Borough of Fanwood's official government records request form as required by the Council and 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 November 4, 2009 Interim Order.
2. Although the Custodian violated N.J.S.A. 47:1A-5.f., the Custodian's violation did not result in an unlawful denial of access because the Complainant's request was invalid. Furthermore, the Custodian submitted certified proof that the Borough adopted a new records request form which complied with N.J.S.A. 47:1A-5.f. three (3) business days after receipt of the Council's Interim Order. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodian's violation of N.J.S.A. 47:1A-5.f. 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. Lack and seconded by Ms. Forsyth. The motion passed unanimously.

Philip Rich v. Randolph Township (Morris) (2008-149)

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 the Complainant has failed to establish in his motion for reconsideration of the Council's September 30, 2009 Findings and Recommendations 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 reaching its decision, 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. Lack and seconded by Ms. Forsyth. The motion passed unanimously.

Rebecca Ashton v. Maurice River Township (Cumberland) (2008-159)

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 because the Custodian has established in his motion for reconsideration of the Council's November 4, 2009 decision and Findings and Recommendations that it is obvious that the GRC did not consider the significance of probative, competent evidence, said motion for reconsideration is granted and the Council's November 4, 2009 Findings and Recommendations are modified to indicate that the Custodian responded timely and in writing to the Complainant's June 26, 2008 requests. 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. Lack and seconded by Ms. Forsyth. The motion passed unanimously.

Frank Amoresano v. Rowan University (2008-168)

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

The Executive Director respectfully recommends the Council find that:

1. The Custodian has complied with the Council's November 4, 2009 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. The *In Camera* Examination set forth in the table below reveals the Custodian has lawfully denied access to the record listed in the document index pursuant to N.J.S.A. 47:1A-6 because the record was used in the deliberative or decision-making process regarding the scope of the Fiscal 2007 internal audits.
3. There is no need to determine whether the Custodian's actions 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 Custodian lawfully denied access to the requested record.

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 ²
1	Audit Risk Assessment & Recommended Audit Plan – June 2006 prepared by Accume Partners	An assessment and recommendation by Accume Partners regarding the scope of the Fiscal 2007 internal audits.	The Custodian asserts that the record is exempt from disclosure as advisory, consultative or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .	<p>The record contains recommendations for the Audit Committee and management to consider in determining the scope of the Fiscal 2007 internal audits (and thus cost) based on the risk assessment estimates of Rowan University made by Accume Partners.</p> <p>As such, the record is exempt from disclosure as advisory, consultative or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u>. because the record was used in the deliberative or decision-making</p>

² **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.

				process regarding the scope of the Fiscal 2007 internal audits.
--	--	--	--	---

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 Mr. Lack. The motion passed unanimously.

Michael Pierone v. County of Warren (2008-195)

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 with amendments:

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian disclosed to the Complainant the payroll check register data from the year 2000 to the date of the Complainant’s OPRA request (as well as the year 2009) and provided certified confirmation of compliance to the GRC’s Executive Director within five (5) business days from receipt of the Council’s November 4, 2009 Interim Order, the Custodian has complied with said Order.

2. Although the Custodian failed to bear his burden of proving a lawful denial of access to the requested payroll register pursuant to N.J.S.A. 47:1A-6, there is no evidence in the record to suggest that the Custodian’s actions had a positive element of conscious wrongdoing or were intentional and deliberate. Additionally, the Custodian complied with the Council’s Interim Order by disclosing the requested records to the Complainant. 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 failure to bear his burden of proving a lawful denial of access pursuant to N.J.S.A. 47:1A-6 appears negligent and heedless since he 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 November 4, 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 provided access to the requested payroll check register. 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 because the Custodian provided access to the requested payroll check register despite having initially denied access to said records prior to the filing of this complaint. Further, the relief ultimately achieved had a basis in law because payroll records are subject to public access pursuant to N.J.S.A. 47:1A-10. As a result, 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). As such, 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. Lack and seconded by Ms. Forsyth. The motion passed unanimously.

Allen Frost v. North Hudson Regional Fire Rescue (Hudson) (2008-198)

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

The Executive Director respectfully recommends the Council find that:

1. The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007). Further, pursuant to Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (December 2008), Counsel's insufficient response has violated N.J.S.A. 47:1A-5.g. because Counsel failed to initially set forth a specific lawful basis for redactions made to the requested executive session meeting minutes.
2. Because the Custodian failed to immediately grant or deny access to the requested 2007 budget, request additional time to respond or request clarification of the request, the Custodian has violated N.J.S.A. 47:1A-5.e.
3. The Custodian's failure to provide a written response to the Complainant's three (3) OPRA requests within the statutorily mandated seven (7) business day time frame resulted in a "deemed" denial, the Custodian violated N.J.S.A. 47:1A-5.e. by failing to immediately respond to the Complainant's request for the North Hudson Regional Fire & Rescue's 2007 budget and Counsel provided an untimely and insufficient response to the Complainant's OPRA requests. However, because Counsel certified that he provided access all records responsive to the Complainant's requests on September 9, 2008 and the Complainant received said records on September 15, 2008, 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. Lack and seconded by Ms. Forsyth. The motion passed unanimously.

Allen Frost v. North Hudson Regional Fire Rescue (Hudson) (2008-201)

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

The Executive Director respectfully recommends the Council find that:

1. The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007). Further, because the Custodian failed to immediately grant or deny access to the four (4) requested budgets, request additional time to respond or request clarification of the request, the Custodian has violated N.J.S.A. 47:1A-5.e.
2. Although the Custodian's failure to provide a written response to the Complainant's ten (10) OPRA requests within the statutorily mandated seven (7) business day time frame resulted in a "deemed" denial and the Custodian violated N.J.S.A. 47:1A-5.e. by failing to immediately respond to the Complainant's request for the four (4) budgets, because Counsel certified in the Statement of Information that he provided access to all records responsive to the Complainant's requests on September 9, 2008 and the Complainant received said records on September 15, 2008, 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 Mr. Lack. The motion passed unanimously.

Vesselin Dittrich v. City of Hoboken (Hudson) (2008-203)

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

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian certified that all records responsive to the Complainant's OPRA request were provided to the Complainant within the statutorily mandated response time, and because the Complainant has failed to provide any evidence to contradict the Custodian's certification, the Custodian has proven that all records responsive to the request were provided in a timely manner pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.
2. Because the Custodian responded to the Complainant's OPRA request in a timely manner by providing the record requested, the Custodian has not unlawfully denied access to the Complainant. The Complainant's requested modification of his OPRA request after the Custodian responded by providing the requested record

within the statutorily mandated response time and the Complainant's refusal to submit a separate OPRA request for the additional records requested, does not result in a denial of access to the OPRA request pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.

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. Lack. The motion passed unanimously.

Nancy Lewen v. Robbinsville Public School District (Mercer) (2008-211)

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. Because the Complainant's request specifically identified the e-mails sought by recipient or sender, by date range and by content, and because Custodian John Szabo by using the given criteria was able to identify the records responsive to the Complainant's request, said request is not overly broad or invalid and Custodian John Szabo has failed to bear his burden of proof that the denial of access to the requested records was authorized by law in accord with N.J.S.A. 47:1A-6. *See also* Courier Post v. Lenape Regional High School District, 360 N.J.Super. 191, 206 (Law Div. 2002) and Sandoval v. NJ State Parole Board, GRC Complaint No. 2006-167 (October 2008).
2. The Custodian shall disclose to the Complainant all attachments to the e-mails responsive to the request that have not already been disclosed, unless the Custodian cannot open or otherwise retrieve any such attachment, in which case the Custodian shall state with specificity the reason such attachment cannot be disclosed 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 1:4-4³, to the Executive Director.**
4. Pursuant to Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the record listed in Table 1, an e-mail from Kathie Foster to Helen Payne dated November 12, 2007, to determine the validity of the assertion by the Custodian that the record was not unreasonably redacted.
5. **The Custodian must deliver⁴ to the Council in a sealed envelope nine (9) copies of the requested unredacted documents (see #4 above), a document or**

³ "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."

⁴The *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.

redaction index⁵, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,⁶ 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.

6. The Council defers analysis of whether either or both Custodians knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

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

Tina Renna v. County of Union (2008-217)

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

The Executive Director respectfully recommends the Council find:

1. The Custodian has complied with the Council's November 4, 2009 Interim Order by providing the Council with the record set forth in Paragraph 2 of the Order within five (5) business days of receiving the Council's Order.
2. The *In Camera* Examination reveals the Custodian lawfully denied access to the requested record (letter from outside counsel to the County Counsel regarding litigation matters) pursuant to N.J.S.A. 47:1A-6 because the attorney-client privilege was not waived by County Counsel's statement at the July 24, 2008 Freeholder meeting.
3. Because the Custodian's behavior did not change as a result of this Denial of Access Complaint, the Complainant is not 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).

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. Lack. The motion passed unanimously.

Tom Coulter v. Township of Bridgewater (Somerset) (2008-220)

⁵ The document or redaction index should identify the document and/or each redaction asserted and the lawful basis for the denial.

⁶ "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."

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. Because the Custodian's Counsel provided a check in the amount of \$4.04, made payable to the Complainant, to the Complainant's Counsel as required by the Council's Interim Order, and because Deputy Clerk Herrera 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 Interim Order, the Custodian has complied with the Council's November 18, 2009 Interim Order.
2. Although the Custodian violated N.J.S.A. 47:1A-5.b. by charging \$5.00 per CD of the requested CD of the audio recording of the public meeting dated February 4, 2008 and failed to bear her burden of proving that the charge represented the actual cost pursuant to N.J.S.A. 47:1A-6., because the Custodian complied with the Council's Interim Order dated November 18, 2009, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodian's violation of N.J.S.A. 47:1A-5.b. appears 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), the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters 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. Lack and seconded by Ms. Forsyth. The motion passed unanimously.

James Logue v. Borough of Fieldsboro (Burlington) (2008-223)

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

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian submitted to the GRC a certification with respect to the Complainant's refusal to purchase the requested records within the time period ordered by the Council, the Custodian complied with the Council's November 4, 2009 Interim Order.
2. Although the Custodian's failure to provide a written response to the Complainant's OPRA request within the statutorily mandated seven (7) business days resulted in a "deemed" denial, because the Custodian did provide a verbal response to the Complainant on the sixth (6th) business day following the date of the Complainant's request informing the Complainant that the requested records would be disclosed to the Complainant upon the Complainant's payment of a \$500.00 special service charge deposit, 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. Lack and seconded by Ms. Forsyth. The motion passed unanimously.

Martin O'Shea v. Township of Little Falls (Passaic) (2008-225)

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. Because the Custodian forwarded the requested records to the Complainant via e-mail as required by the Council's Interim Order, 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 Interim Order, the Custodian has complied with the Council's November 18, 2009 Interim Order.
2. Although the Custodian violated N.J.S.A. 47:1A-5.g. by failing to specifically address the reason why the records responsive to the Complainant's OPRA request could not be provided by the preferred method of delivery, because the Custodian complied with the Council's Interim Order dated November 18, 2009, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodian's insufficient response appears negligent and heedless since he 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), the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196

N.J. 51 (2008), a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters 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. Forsyth and seconded by Ms. Lack. The motion passed unanimously.

Jesse Wolosky v. Township of Frankford (Sussex) (2008-254)

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

The Executive Director respectfully recommends the Council find:

1. The Custodian has not timely complied with Paragraphs 4 or 6 of the Council's November 4, 2009 Interim Order by providing the Council with all records set forth in Paragraphs 4 and 6 of the Order within five (5) business days of receiving the Council's Order or by November 16, 2009.
2. The Custodian unlawfully denied access to the requested records because the letters attached to three (3) of the e-mails are not exempt from disclosure under the attorney-client privilege pursuant to N.J.S.A. 47:1A-1.1 since they are letters from the Township Attorney to another attorney on behalf of the Clerk.
3. The Custodian also unlawfully denied access to the non-exempt portions of the otherwise attorney-client privileged e-mails because disclosure is required for the following e-mail lines: To, From, Date, Subject and opening/closing salutations as required by N.J.S.A. 47:1A-5.g.
4. **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 (also see paragraphs 2 and 3 above) 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 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 ⁷
1	E-mail dated Tuesday, October 28, 2008 from pkoonce@benbrooklaw.com to blg@buzaklawgroup.com with copies to mlglaw@nac.net , rfornaro@forncioso.com and clerk@frankfordtwp-nj.com with attachment (Letter dated October 28, 2008 from Kevin P. Benbrook, Esq. to Edward J. Buzak, Esq.)	E-mail regarding the Recall of Robert McDowell Committee v. Frankfort Township	Custodian denied access because she asserts the record is exempt from disclosure under the attorney-client privilege pursuant to <u>N.J.S.A. 47:1A-1.1.</u>	There is no text in this e-mail. However, the Custodian must disclose the following lines of the e-mail: (1) From: ... (2) Sent: ... (3) To: ... (4) Cc: ... (5) Subject. Additionally, the attachment is a letter from the Township Attorney to another attorney. This record is not exempt from disclosure because it is not attorney-client privileged since it is correspondence between attorneys and not between an attorney and his/her client. Therefore, the

⁷ **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.

				Custodian must disclose this record in its entirety to the Complainant.
2	E-mail dated Wednesday, October 22, 2008 from pkoonce@benbrooklaw.com to mlglaw@nac.net , with copies to blg@buzaklawgroup.com , rfornero@fornerofrancioso.com and clerk@frankfordtwp-nj.com with attachment (Letter dated October 22, 2008 from Kevin P. Benbrook, Esq. to Robert B. Campbell, Esq.)	E-mail regarding the Recall of Robert McDowell Committee v. Frankfort Township	Custodian denied access because she asserts the record is exempt from disclosure under the attorney-client privilege pursuant to <u>N.J.S.A. 47:1A-1.1</u> .	There is no text in this e-mail. However, the Custodian must disclose the following lines of the e-mail: (1) From: ... (2) Sent: ... (3) To: ... (4) Cc: ... (5) Subject. Additionally, the attachment is a letter from the Township Attorney to another attorney. This record is not exempt from disclosure because it is not attorney-client privileged since it is correspondence between attorneys and not between an attorney and his/her client. Therefore, the Custodian must disclose this record in its entirety to the Complainant.
3	E-mail dated Monday, October 20, 2008 from pkoonce@benbrooklaw.com to rfornero@fornerofrancioso.com	E-mail regarding the recall of Robert McDowell	Custodian denied access because she asserts the record is exempt from disclosure under the	There is no text in this e-mail. However, the Custodian must disclose the following lines of the e-mail: (1) From: ...

	<p>m with copies to clerk@frankfordtownshipnj.com and blg@buzaklawgroup.com with attachment (Letter dated October 28, 2008 from Kevin P. Benbrook, Esq. to Richard D. Fornaro, Esq.)</p>		<p>attorney-client privilege pursuant to <u>N.J.S.A. 47:1A-1.1.</u></p>	<p>(2) Sent: ... (3) To: ... (4) Cc: ... (5) Subject.</p> <p>Additionally, the attachment is a letter from the Township Attorney to another attorney. This record is not exempt from disclosure because it is not attorney-client privileged since it is correspondence between attorneys and not between an attorney and his/her client. Therefore, the Custodian must disclose this record in its entirety to the Complainant.</p>
4	<p>E-mail dated Monday, July 21, 2008 from pkoonce@benbrooklaw.com to clerk@frankfordtownshipnj.com</p>	<p>E-mail regarding the recall of Robert McDowell</p>	<p>Custodian denied access because she asserts the record is exempt from disclosure under the attorney-client privilege pursuant to <u>N.J.S.A. 47:1A-1.1.</u></p>	<p>The text of the e-mail is exempt from disclosure under the attorney-client privilege pursuant to <u>N.J.S.A. 47:1A-1.1.</u> because the attorney is providing advice to the clerk. However, the Custodian must disclose the following lines of the e-mail: (1) Subject: ... (2) From: ... (3) Date: ... (4) To: ... (5) Opening</p>

				salutation (Clerk's name) (6) Closing salutation (Attorney's name).
5	E-mail dated Monday, April 3, 2008 from kbenbrook@benbrooklaw.com to clerk@frankfordwp-nj.com	E-mail regarding the recall	Custodian denied access because she asserts the record is exempt from disclosure under the attorney-client privilege pursuant to <u>N.J.S.A. 47:1A-1.1</u> .	The text of the e-mail is exempt from disclosure under the attorney-client privilege pursuant to <u>N.J.S.A. 47:1A-1.1</u> . as it discusses strategy. However, the Custodian must disclose the following lines of the e-mail: (1) Subject: ... (2) From: ... (3) Date: ... (4) To: ... (5) Opening salutation (Clerk's name) (6) Closing salutation (Attorney's name)

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. Lack. The motion passed unanimously.

Anonymous v. Franklin Township Fire District #1 (Somerset) (2008-257)

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

The Executive Director respectfully recommends the Council find that:

1. Although the Custodian provided the GRC with the requested records and the Custodian's certification in compliance with the Council's September 30, 2009 Interim Order on October 12, 2009, in a timely manner, the Custodian did not include a document or redaction index at that time. The Custodian did, however, submit such redaction index on November 12, 2009. Therefore, the Custodian did not timely comply with the Council's September 30, 2009 Interim Order.

2. The *In Camera* Examination set forth in the table below reveals the Custodian has lawfully denied access to the requested record as personnel material pursuant to N.J.S.A. 47:1A-10. As such, the Custodian has borne his burden of proving a lawful denial of access pursuant to N.J.S.A. 47:1A-6.
3. Although the Custodian failed to comply with the Council's September 30, 2009 Interim Order within five (5) business days of receipt of the Order by failing to provide a redaction index, the Custodian did ultimately comply with the Council's September 30, 2009 Interim Order on November 12, 2009. Moreover, the results of the *in camera* review determine that the Custodian lawfully denied access to the requested records since the redacted portions are exempt from disclosure pursuant to the personnel exemption of OPRA at N.J.S.A. 47:1A-10. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
4. Because the evidence of record indicates that the Custodian disclosed records to the Complainant on July 25, 2008 and on October 10, 2008 disclosed unredacted copies of Resolution 08-21 and meeting minutes dated December 10, 2007 as well as redacted copies of Executive Session meeting minutes dated January 28, 2008, May 19, 2008 and June 23, 2008, and because the Denial of Access Complaint in this matter was filed on November 12, 2008, and because the results of the *in camera* review have determined that the Custodian lawfully denied access to the requested records since the redacted portions are exempt from disclosure pursuant to the personnel exemption of OPRA at N.J.S.A. 47:1A-10, the Complainant is not a prevailing party entitled to an award of prevailing party attorney fees.

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> Examination⁸
Meeting minutes dated 1/28/2008, 5	Meeting minutes dated 1/28/2008	Page 2, third paragraph	Personnel matter, legal opinion	The redacted material is exempt from disclosure

⁸ **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.

pages				under the personnel matter exemption of OPRA set forth at <u>N.J.S.A. 47:1A-10</u> .
Meeting minutes dated 1/28/2008 (cont'd)	Meeting minutes dated 1/28/2008	Page 2, fifth paragraph to page 5	Personnel matter	The redacted material is exempt from disclosure under the personnel matter exemption of OPRA set forth at <u>N.J.S.A. 47:1A-10</u> .
Meeting minutes dated 5/19/2008, 3 pages	Meeting minutes dated 5/19/2008	Redacted in their entirety	Personnel matter	The redacted material is exempt from disclosure under the personnel matter exemption of OPRA set forth at <u>N.J.S.A. 47:1A-10</u> .
Meeting minutes dated 6/23/2008, 6 pages	Meeting minutes dated 6/23/2008	Redacted from Page 2 to conclusion	Personnel matter	The redacted material is exempt from disclosure under the personnel matter exemption of OPRA set forth at <u>N.J.S.A. 47:1A-10</u> .
Meeting minutes dated 6/23/2008 (cont'd)	Voting Record	Second block under "Motion" redacted	None given	The redacted material is exempt from disclosure under the personnel matter exemption of OPRA set forth at <u>N.J.S.A. 47:1A-10</u> .

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

Donald Gabardi v. Voorhees Township Police Department (Camden) (2008-259)

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. Because Voorhees Police Department employee Debbie Bradshaw failed to forward the OPRA request to the Custodian or direct the Complainant to the Custodian she violated N.J.S.A. 47:1A-5.h. See also Mourning v. Department of Corrections, GRC Complaint No. 2006-75 (August 2006), Vessio v. New Jersey Department of Community Affairs, Division of Fire Safety, GRC Complaint No. 2007-63 (May 2007) and Morgano v. NJ Office of the Public Defender, Essex County, GRC Complaint No. 2008-79 (July 2008).
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. Because the Custodian certified that the records relevant to the complaint are prohibited from disclosure pursuant to the provisions of N.J.S.A. 2A:4A-60, and because that statute is a law that contains provisions not abrogated by OPRA pursuant to N.J.S.A. 47:1A-9.a., the confidentiality provisions of N.J.S.A. 2A:4A-60 restricts public access to the requested records. Accordingly, the Custodian lawfully denied the Complainant access to the requested records.
4. Although Debbie Bradshaw violated OPRA by failing to forward the OPRA request to the Custodian or direct the Complainant to the Custodian and thereby prevented the Custodian from responding to the Complainant in a timely manner consequently resulting in a "deemed" denial, because Ms. Bradshaw did sign the OPRA form acknowledging receipt of the Complainant's OPRA request, her failure to promptly forward the OPRA request to the Custodian does not appear to have been purposeful or deliberate. Therefore, it is concluded that employee Debbie Bradshaw'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, Ms. Bradshaw's failure to forward the OPRA request to the Custodian or direct the Complainant to the Custodian, thereby preventing the Custodian from responding to the Complainant in a timely manner which resulted in a "deemed" denial, appears negligent and heedless since she is an officer or employee of a public agency required to comply with the provisions of OPRA.

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

Jesse Wolosky v. Township of Frankford (Sussex) (2008-278)

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

The Executive Director respectfully recommends the Council find:

1. The Custodian has complied with the Council's September 30, 2009 Interim Order by providing the Council with all records set forth in Paragraphs 2 and 4 of the Order within five (5) business days of receiving the Council's Order.
2. The Custodian unlawfully denied access to the requested records because OPRA requires that when only a portion of a government record is exempt from disclosure, a custodian must redact from a copy of the record that portion which is exempt and disclose the remainder of the record. N.J.S.A. 47:1A-5.g. The Custodian unlawfully denied access to the entire record when only a portion of the record was exempt from disclosure pursuant to the Open Public Meetings Act regarding a personnel matter and a litigation matter for which a governing body is allowed to exclude the public. N.J.S.A. 10:4-12(b)(7) and (8).
3. **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. 1:4-4⁹ 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> Examination¹⁰
1	August 28, 2008 Executive Session Minutes	Executive session minutes from the Township of Frankford's	The Custodian asserts that disclosure would reveal a personnel	The executive session minutes are disclosable except that the paragraph entitled

⁹ "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."

¹⁰ **Unless expressly identified for redaction, everything in the record shall be disclosed.** For purposes of identifying redactions, unless otherwise noted a paragraph/new paragraph begins whenever there is an indentation and/or a skipped space(s). The paragraphs are to be counted starting with the first whole paragraph in each record and continuing sequentially through the end of the record. If a record is subdivided with topic headings, renumbering of paragraphs will commence under each new topic heading. Sentences are to be counted in sequential order throughout each paragraph in each record. Each new paragraph will begin with a new sentence number. If only a portion of a sentence is to be redacted, the word in the sentence which the redaction follows or precedes, as the case may be, will be identified and set off in quotation marks. If there is any question as to the location and/or extent of the redaction, the GRC should be contacted for clarification before the record is redacted. The GRC recommends the redactor make a paper copy of the original record and manually "black out" the information on the copy with a dark colored marker, then provide a copy of the blacked-out record to the requester.

		<p>August 28, 2008 Council Meeting</p>	<p>matter exempt from disclosure pursuant to <u>N.J.S.A.</u> 47:1A-10 and a litigation matter exempt from disclosure under the attorney-client privilege pursuant to <u>N.J.S.A.</u> 47:1A-1.1.</p>	<p>“Personnel – DPW” is exempt from disclosure under OPMA because the discussion is that of a personnel matter pursuant to <u>N.J.S.A.</u> 10:4- 12(b)(8).</p> <p>With regards to the paragraph entitled “OPRA violation suit ...” the text of the paragraph is disclosable but the remainder of the paragraph’s title is exempt from disclosure under OPMA because it reveals the parties of anticipated litigation and is thus exempt pursuant to <u>N.J.S.A.</u> 10:4- 12(b)(7).</p> <p>Therefore, the Custodian must disclose the minutes with redactions made for:</p> <p>(1) the entire paragraph entitled “Personnel – DPW” except its title is disclosable, and</p> <p>(2) the remainder of the paragraph title which</p>
--	--	--	---	--

				<p>begins “OPRA violation suit” except that the text of the paragraph is disclosable.</p> <p>The remainder of the record must be disclosed to the Complainant.</p>
--	--	--	--	--

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. Lack. The motion passed unanimously.

Betty Greitzer v. NJ Department of Law & Public Safety, Div. of Consumer Affairs (2008-279)

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. Because the Custodian disclosed to the Complainant in a timely manner the credentials of Investigator Joseph Rothstein and simultaneously provided certified confirmation of compliance with the Council’s Interim Order to the Executive Director, the Custodian complied with the provisions of the Council’s November 4, 2009 Interim Order.

2. Although the Custodian failed to prove that denial of access to the credentials issued by the State of New Jersey to the representative of the Bureau was authorized by law, because the Custodian certified that he provided a copy of said credentials to the Complainant in a timely manner in compliance with the Council’s November 4, 2009 Interim Order, 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 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. Lack. The motion passed unanimously.

David Nugent v. Ocean County College (2009-4)

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

The Executive Director respectfully recommends the Council find that:

1. Because the Complainant's OPRA request dated October 14, 2008 does not identify with reasonable clarity a specific government record, 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).
2. Because the Custodian in this complaint certified that there are no records responsive to the Complainant's OPRA requests dated November 28, 2008 and December 6, 2008, and there is no credible evidence in the record to refute the Custodian's certification, the Custodian has carried his burden of proving that the denial of access to said requests 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).

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

Jesse Wolosky v. Township of Fredon (Sussex) (2009-12)

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. 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 October 23, 2008 executive session meeting minutes to determine the validity of the Custodian's assertion that pursuant to N.J.S.A. 10:4-12(b)7, she redacted from the minutes the portion of the discussion relating to anticipated or pending litigation.
2. **The Custodian must deliver¹¹ to the Council in a sealed envelope nine (9) copies of the requested unredacted document (see #1 above), a document or redaction index¹², as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,¹³ 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.**

¹¹ 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.

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

¹³ "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."

3. Because public agencies are expressly directed to adopt an official OPRA request form, and because the Township of Fredon's official OPRA request form does not conform to the minimum form requirements set forth in N.J.S.A. 47:1A-5.f., the Custodian has violated N.J.S.A. 47:1A-5.f. The Custodian shall, therefore, amend the Township's current official OPRA request form to include all of the requirements set forth in N.J.S.A. 47:1A-5.f. Moreover, pursuant to O'Shea v. Township of West Milford, GRC Complaint No. 2007-237 (May 2008), the Custodian shall either delete the definition of a public record from the Township of Fredon's OPRA request form, or amend the form to include the definition of a "government record" as set forth in N.J.S.A. 47:1A-1.1.
4. **The Custodian shall comply with item #3 above within five (5) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,¹⁴ to the Executive Director.**
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.

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. Lack. The motion passed unanimously.

Jesse Wolosky v. Township of Green (Sussex) (2009-15)

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

The Executive Director respectfully recommends the Council find that:

1. Although the Custodian made the requested executive session minutes available to the Complainant within the statutorily mandated seven (7) business days, the Custodian violated OPRA at N.J.S.A. 47:1A-5.d. and N.J.S.A. 47:1A-5.g. by failing to provide said records to the Complainant by the Complainant's preferred method of delivery when the Custodian had the capability to do so. See O'Shea v. Township of Fredon (Sussex), GRC Complaint No. 2007-251 (April 2008), and Paff v. Borough of Sussex (Sussex), GRC Complaint No. 2008-38 (July 2008). However, the Custodian provided the requested executive session minutes to the Complainant via facsimile on January 9, 2009.
2. Because the Custodian certified that the requested deposit of \$25.00 was not a charge for the actual cost of any amount of CDs or a charge for actual labor cost, said charge

¹⁴ "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."

is improper pursuant to N.J.S.A. 47:1A-5.b. As such, the Custodian must disclose to the Complainant the requested check registry upon payment of the actual cost of the CD-ROM pursuant to N.J.S.A. 47:1A-5.b. (it is unlikely that the actual cost of the CD-ROM is \$5.00). See Libertarian Party of Central New Jersey v. Murphy, 384 N.J. Super. 136 (App. Div. 2006) (holding that “[t]he imposition of a facially inordinate fee for copying onto a computer diskette information the municipality stores electronically places an unreasonable burden on the right of access guaranteed by OPRA, and violates the guiding principle set by the statute that a fee should reflect the actual cost of duplication”).

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 1:4-4,¹⁵ to the Executive Director. The Custodian must include in said certification the actual cost of the CD-ROM which is likely less than \$5.00.**
4. The statement contained on the Township’s OPRA request form which indicates that police investigation reports are exempt from public access under OPRA is misleading because said statement fails to address the disclosure of arrest reports provided for under N.J.S.A. 47:1A-3.b. As such, pursuant to O’Shea v. Township of West Milford (Passaic), GRC Complaint No. 2007-237 (December 2008), a requestor may be deterred from submitting an OPRA request for certain police investigation reports because the Township’s form provides misinformation regarding the accessibility of said records, in essence, denying the requestor access to the records.

However, the Custodian certified in her Statement of Information that the municipality is currently in the process of adopting the model form published by the GRC. The GRC accessed the Township’s OPRA request form from its website on October 7, 2009. The form posted to the website is the GRC’s Model Request Form. As such, the Council declines to order the Custodian to amend its OPRA request form.

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.

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. Lack. The motion passed unanimously.

Jesse Wolosky v. Township of Vernon (Sussex) (2009-16)

¹⁵ "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. Lownie reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Lownie presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. Although the Custodian provided the Complainant with a written response to his OPRA request within the statutorily mandated seven (7) business days in which the Custodian granted access to redacted copies of the requested executive session minutes, the Custodian failed to provide the Complainant with a detailed and lawful basis for each redaction. As such, the Custodian's response to the Complainant's OPRA request is legally insufficient pursuant to N.J.S.A. 47:1A-5.g.
2. Pursuant to Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the requested record (Township Council's executive session minutes dated August 14, 2008) to determine the validity of the Custodian's assertion that the redacted portions constitute attorney-client privileged information and/or contract negotiations which are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.
3. **The Custodian must deliver¹⁶ to the Council in a sealed envelope nine (9) copies of the requested unredacted document (see #2 above), a document or redaction index¹⁷, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4¹⁸, 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.**
4. 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 outcome of the Council's *in camera* review.
5. The Council defers analysis of whether the Complainant is a prevailing party pending the outcome of the Council's *in camera* review.

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

Rita Watson v. Washington Township Public Schools (Gloucester) (2009-29)

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:

¹⁶ 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.

¹⁷ The document or redaction index should identify the document and/or each redaction asserted and the lawful basis for the denial.

¹⁸ "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."

The Executive Director respectfully recommends the Council find that because there are disputed issues of material fact, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts, as well as for a determination of whether the Custodian unlawfully denied access and, if so, whether such denial 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. Lack and seconded by Ms. Forsyth. The motion passed unanimously.

Richard Rivera v. Mercer County Prosecutor's Office (2009-34)

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

The Executive Director respectfully recommends the Council find that:

1. The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or properly requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's 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 Custodian certified that the written notifications responsive are created as part of criminal investigations into whether a person is legally in the United States and utilized by the Mercer County Prosecutor's Office as part of their criminal investigations, the records are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1. and Janeczko v. NJ Department of Law and Public Safety, Division of Criminal Justice, GRC Complaint No. 2002-79 and 2002-80 (June 2004) and the Custodian has not unlawfully denied access to the written notifications. *See also* Briggs v. City of Trenton (Mercer), GRC Complaint No. 2007-58 (March 2007)(holding that Custodian lawfully denied access to records deemed to be criminal investigatory in nature).
3. Because the Complainant's OPRA request Item No. 3 seeks information rather than a specifically identifiable government record, the request item is 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 provide a written response to the Complainant's OPRA request within the statutorily mandated time frame resulted in a "deemed" denial, because the Custodian lawfully denied access to the written notifications responsive to request Item No. 2 and request Item No. 3 of the Complainant's OPRA request is invalid under OPRA, 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. Lack and seconded by Ms. Forsyth. The motion passed unanimously.

Richard Rivera v. Hunterdon County Prosecutor's Office (2009-35)

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 properly requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's 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 Complainant identified types of records in request Item No. 2 and requested data and information in request Items No. 3, No. 4 and No. 5 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 request items 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 (March 2008). *See also* Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2008-70 and 2008-71 (February 2009).
3. The Custodian stated in the Statement of Information that the Hunterdon County Prosecutor's Office did not possess any records responsive to the Complainant's request Items No. 2 through No. 5 and subsequently certified to such on October 22, 2009, 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 failing to respond in writing within the statutorily required seven (7) business days resulting in a "deemed" denial, the Custodian has not unlawfully denied access to the Complainant's request Items No. 2 through No. 5 pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).
4. Although the Custodian's failure to provide a written response to the Complainant's OPRA request within the statutorily mandated time frame resulted in a "deemed" denial, because the Complainant's request Items No. 2 through No. 5 are invalid

under OPRA and because the Custodian certified that no records responsive to request Item No. 2 through No. 5 exist, 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. Lack and seconded by Ms. Forsyth. The motion passed unanimously.

John Allen v. Mercer County Prosecutor's Office (2009-38)

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. Request Item Nos. 1, 2 and 3 are invalid because they are overly broad and do not identify with reasonable clarity the records sought 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), and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007).
3. Request Item No. 4 is invalid because it seeks access to information and does not identify a specific government record. 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); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
4. Request Item No. 6 is invalid because it is overly broad and unclear and does not identify a specific government record. 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).
5. Because the Custodian has certified that no records responsive to Request Item Nos. 5, 7, and 8 exist and there is no credible evidence in the record to refute this

certification, the Custodian has not unlawfully denied the Complainant access to the records requested in Request Items Nos. 5, 7, and 8 pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).

6. Although the Custodian's failure to respond within 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 Request Item Nos. 1-4 and 6 are invalid under OPRA and the Custodian certified that no records responsive to Request Item Nos. 5, 7, and 8 exist. However, the Custodian's "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. Lack and seconded by Ms. Forsyth. The motion passed unanimously.

Jesse Wolosky v. Vernon Township Board of Education (Sussex) (2009-57)

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. Because the requested executive session meeting minutes were approved by the Vernon Township Board of Education and no longer constitute advisory, consultative or deliberative material pursuant to N.J.S.A. 47:1A-1.1., the Custodian failed to bear his burden of proving a lawful denial of access to the requested executive session meeting minutes pursuant to N.J.S.A. 47:1A-6.
2. Because N.J.S.A. 47:1A-5.f. requires that specific elements be contained in an official OPRA request, the Custodian shall amend the Board of Education's official OPRA request form to include the following requirements set forth in N.J.S.A. 47:1A-5.f., which are currently absent on the Vernon Township Board of Education's official OPRA request form:
 - specific directions and procedures for requesting a record;
 - the time period within which the public agency is required by [OPRA], to make the record available;
 - a statement of the requestor's right to challenge a decision by the public agency to deny access and the procedure for filing an appeal;
 - space for the custodian to list reasons if a request is denied in whole or in part.
3. **The Custodian shall comply with Item No. 2 above within five (5) business days from receipt of the Council's Interim Order and provide certified confirmation**

of compliance, in accordance with N.J. Court Rule 1:4-4¹⁹, to the Executive Director.

4. 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.
5. The Council defers analysis of whether the Complainant is a prevailing party 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. Lack and seconded by Ms. Forsyth. The motion passed unanimously.

Theresa Welsh v. Township of Barnegat (Ocean) (2009-59)

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 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 Complainant's request Item No. 1 fails to specify identifiable government records and requires the Custodian to conduct research in order to determine the records which may be responsive to the request item, and because request Item No. 2 seeks information rather than an identifiable government record, the Complainant's request is invalid under OPRA. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council of 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's failure to provide a written response to the Complainant's request within the statutorily mandated seven (7) business days resulted in a "deemed" denial, because the Complainant's request is invalid under OPRA, 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

¹⁹ "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."

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. Lack. The motion passed unanimously.

Jacqueline Andrews v. Township of Irvington (Essex) (2009-111)

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. Because the Custodian failed to disclose to the Complainant the records ordered for disclosure or certify that no records responsive to the Complainant's OPRA request exist pursuant to the terms of the Council's November 4, 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 November 4, 2009 Interim Order and is therefore in contempt of said Order.
2. 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 determination of whether the Custodian 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. Lack. The motion passed unanimously.

Complaints on Appeal: None.

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

Special Comment from the Council Chairwoman:

At this time, the Council would like to acknowledge the life and legacy of Mr. Martin O'Shea – a true open government advocate. Mr. O'Shea passed away on Friday, December 11, 2009.

Mr. O'Shea was tireless in his efforts to make government action in New Jersey more transparent to the residents of this State. Many of Mr. O'Shea's GRC complaints explored gray areas in the Open Public Records Act ("OPRA") and the resulting decisions of this Council established precedent for all requestors and custodians to follow. His pioneering efforts helped clarify a sometimes unclear statute. Further, his

open government advocacy resulted in greater access at less cost for all citizens of New Jersey.

Mr. O'Shea challenged all government agencies, including the GRC, to be its best in complying with OPRA or in the case of the GRC - in administrating OPRA and adjudicating denial of access complaints. On several occasions, Mr. O'Shea wrote to and telephoned our Executive Director with suggestions on internal and external policies the Council should consider. Most recently, our Executive Director contacted Mr. O'Shea to congratulate him on his victory in Court regarding access to police use of force reports. Mr. O'Shea simply thanked Catherine Starghill for her telephone call and reminded her that there is still much work for him yet to complete.

On December 11, 2009, the State lost a true warrior for transparency in government but there is no doubt that his legacy will long be remembered by New Jersey residents and government officials alike.

Executive Director's Report and New Business: Ms. Starghill informed the Council members that she sent e-mails to the parties of the twelve (12) complaints for which the Council cannot adjudicate due to a lack of quorum simply informing them of the situation since several have inquired as to the delay.

Public Comment: None.

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

Meeting adjourned at 11:35 a.m.

Respectfully submitted,

Harlynn Lack, Secretary

Date Approved: 01/26/2010