

# New Jersey Government Records Council Denial of Access Complaint

**Please read these instructions before completing this form:**

- This form is to be used only for claims of denial of access to public records that you want the Government Records Council (GRC) to decide. Your request must have been made on or after July 8, 2002 under "OPRA," the Open Public Records Act (N.J.S.A. 47:1A-1 et seq.).
- If you believe you have wrongfully been denied access to a public record under OPRA, you may ask the GRC staff for informal assistance in resolving the matter by calling 866-850-0511, by e-mail at [grc@dca.state.nj.us](mailto:grc@dca.state.nj.us), or by writing to the GRC at P.O. Box 819, Trenton, NJ 08625. If a resolution cannot be reached or if you do not wish to consult the GRC staff, you may EITHER file this Complaint with the GRC or seek relief from the Law Division of Superior Court, but not both.
- Please print or type your responses, and provide ALL information requested. Incomplete forms will delay processing. This form is available in downloadable format from the GRC web site at [www.nj.gov/grc](http://www.nj.gov/grc).
- Only one complaint is required for each OPRA request form, regardless of the number of documents sought in the request.
- The GRC recommends that you send the Custodian listed in Section 2 a copy of this complaint and that you keep a copy for your own files.

**1. About the Requester of the Documents:**

Full Name: John Paff

Mailing Address: PO Box 5424

City: Somerset State: NJ ZIP 08875-5424

Please provide a phone number at which GRC staff can contact you between 8 A.M.-5 P.M., Monday-Friday: 732-873-1251

Fax Number: 908-325-0129 E-Mail address (if used): paff@pobox.com

If you are represented by an attorney, please provide:

Name: n/a Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Should we contact your attorney for further information on this Complaint? Yes  No

**2. About the Custodian of Records:**

Name of the public agency from which records were sought: Township of Old Bridge

Name of custodian on whom records request was served: Rose-Marie Saracino

Telephone Number: 732-721-5600 X 2200 E-Mail address (if used): \_\_\_\_\_

Name of custodian who denied records request: Same

Telephone Number: same Other Telephone (if used): \_\_\_\_\_

Fax Number: 732-607-7944 E-Mail address (if used): \_\_\_\_\_

3. About the Record Request:

Date your records request was provided to the custodian: March 15, 2005, March 28, 2005, March 29, 2005

Did you receive a reply to your request? Yes [X] No [ ]

If so, state the date your request was denied: March 16, 2005, March 23, 2005, April 4, 2005

Has there been any other complaint filed with the GRC concerning this record request or any document sought in it? Yes [ ] No [X]

If yes, state the date the Complaint was submitted to the GRC, the case number of the Complaint, and the final disposition of the Complaint, if known.

Date: Case Number:

Disposition:

Have you ever before spoken with or written to the GRC or its staff about the record request or any document sought in it?

Yes [ ] Date: No [X]

Have you filed any action with the N.J. Superior Court concerning this record request or any document sought in it?

No [X] Yes [ ] If Yes, Docket Number:

4. Documents to submit with this Form:

- Complete the attached Records Denied List to describe the records to which you were denied access.
Attach a copy of the Records Request Form you filed with the public agency and any correspondence between you and the record custodian(s) or staff that concern the portion of your OPRA request that was denied.
Summarize in writing the content, time and date of any conversations regarding this complaint, along with the names of the participants and any witnesses.
Provide any written arguments or other information you would like the Council to consider in deciding your complaint.

5. Verification of Complaint:

By signing this complaint, I affirm that:

- I am the person who submitted the OPRA request for records which is the subject of this Complaint;
The information I have provided is true to the best of my knowledge and belief;
The documents submitted with this Complaint are true copies of material which I believe is relevant to my claim; and
I am not seeking disclosure of any personal information pertaining to the victim of any crime committed by me which is an indictable offense under the laws of the State of New Jersey or any other State, or pertaining to the family of that victim.

Signature (required)

Date

MAIL THIS COMPLAINT AND ALL SUPPORTING DOCUMENTATION TO:

Government Records Council, PO Box 819, Trenton, New Jersey 08625

The GRC recommends that Requester send the Custodian listed in Section 2 a copy of this complaint.

***New Jersey Government Records Council  
Denial of Access Complaint – Supplement  
In RE Paff v. Township of Old Bridge***

Statement of Facts:

1. On March 15, 2005, I faxed a two-page government record request (attached as Exhibit A) to Custodian.
2. On March 16, 2005, I received a one-page letter from Custodian (attached as Exhibit B) advising me “in accordance with OPRA, we are mailing a records request form to be completed by you.” I received the blank request form in the mail a few days later.
3. On March 28, 2005, I faxed a letter, a completed “Request for Access to Government Records” form and an “Exhibit A” (a total of three pages, attached as Exhibit C) to Custodian.
4. On March 29, 2005, I received Custodian’s March 23, 2005 one-page letter (attached as Exhibit D) which advised me of the cost for fulfilling my request and informed me that I had “not yet returned the Request for Information form which was sent to [me] on 3/16/05.”
5. On March 29, 2005, I faxed Custodian a one-page letter (attached as Exhibit E) informing her that I had received her March 23, 2005 letter.
6. On March 29, 2005, I mailed Custodian a completed and signed “Request for Access to Government Records” form, an “Exhibit A” (a total of two pages, attached as Exhibit F) along with my \$25.81 check.
7. On April 7, 2005, I received a one-page April 4, 2005 “Public Records Request Response” from Custodian (attached as Exhibit G) along with several pages of document that purported to be in response to my request.
8. As of the date of this complaint, I have received no further documents from Custodian.
9. Attached as Exhibit H is the Custodian’s original tri-part “Request for Access to Government Records” form. (The reverse of the form is designated “Exhibit H2”)

Legal Argument:

There are three issues:

- Custodian improperly denied my request for minutes of the Township Council’s closed (executive) sessions held on December 1, 2003 and March 1, 2004.
- Custodian incorrectly required me to complete her office’s OPRA request form even though my faxed letter of March 15, 2005 was sufficient.
- The Custodian’s OPRA request form does not comply with N.J.S.A. 47:1A-5(f)

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**A. Improper denial of closed (executive) session minutes.**

My March 15, 2005 request asked for “minutes from the Township Council’s closed (executive) sessions held on December 1, 2003 and March 1, 2004” (Exhibit A, ¶ 1). In her April 4, 2005 response, Custodian denied access to the minutes by stating that they are “Not available.” She further states that “minutes or other record of these discussions shall be available to be disclosed to the public in sixty (60) months unless a sooner date is determined by a vote of the governing body at a public session” (Exhibit G).

Executive session minutes are “government records” under OPRA. Davis v. Rumson Fair-Haven Board of Education, GRC Case No. 2003-56. The New Jersey Supreme Court has held that a public body must promptly disclose its executive session minutes even if the purpose for holding the executive session was legitimate. Payton v. New Jersey Turnpike Authority, 148 N.J. 524, 556-57 (1997).

The only exception is “when full disclosure would subvert the purpose of the particular [Open Public Meetings Act] exception.” Ibid. Even then, total suppression is justified only in “unusual case[s]” where the public interest in the suppressed information is slight and where even minimal disclosure would cause great public harm. Ibid. The Court went on to state that

[i]n the vast majority of cases in which full disclosure would have an adverse impact on the purpose of the particular exception, other methods of maintaining confidentiality can be achieved, such as redacting the specific information that would undermine the exception. We stress, however, that, given the Legislature’s strongly stated intent to effectuate broad public participation in the affairs of governmental bodies, few cases will require even partial nondisclosure.

Ibid.

N.J.S.A. 47:1A-5(g) requires custodians to “delete or excise from a copy of the record that portion which the custodian asserts is exempt from access” and to “promptly permit access to the remainder of the record.” Thus, OPRA is consistent with the Supreme Court’s holding regarding redaction of executive session minutes.

OPRA burdens a custodian or her public agency with proving “that the denial of access is authorized by law.” N.J.S.A. 47:1A-6. Custodian cites no statute or other authority justifying her position that executive session minutes, in all cases, can be lawfully withheld for sixty (60) months or until release is specifically authorized by the governing body. Accordingly, Custodian has failed, at least so far, to satisfy her burden of proving that the two sets of executive session minutes requested are legally entitled to be completely suppressed.

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**B. Improper requirement that Custodian's OPRA form be completed.**

The following is from the Council's website at  
[http://www.state.nj.us/grc/records\\_notes/rnrequestforms.html](http://www.state.nj.us/grc/records_notes/rnrequestforms.html)

***Use of Request Forms***

*Must a public agency accept a request for public records if it is not on the Custodian's OPRA form? The answer is yes. The reason why is explained below, along with advice for custodians on handling these requests.*

\* \* \*

*. . . the requirement for custodians to adopt an "official" OPRA request form is intended to educate and assist the public with the process of obtaining records under OPRA. It is not intended as a barrier to access for those requestors who already know their rights under OPRA and know what information is required by a custodian to complete an OPRA request.*

*Thus, a custodian should accept any communication that is clearly a request for records if it contains the information necessary for that custodian to fulfill the request, even if it is not submitted on the custodian's "official" OPRA request form. Necessary information would include a description of the record(s) sought, the maximum dollar amount the requester is willing to pay if copies are requested, and a plain statement that the submission is intended as a request for records . . .*

*If a custodian rejects a request because of insufficient information, the correspondence should be returned to the requester with a copy of the agency's OPRA form, indicating why the correspondence does not meet the criteria for requests under OPRA, and that the agency will accept a revised submission or a request submitted on the agency's form.*

My March 15, 2005 letter (Exhibit A) is clearly a request for public records. Yet her correspondence of March 16, 2005 (Exhibit B) and March 23, 2005 (Exhibit D) make it clear that Custodian was not going to fulfill my request unless and until it was submitted on her agency's form.

**C. Custodian's OPRA form fails to comply with N.J.S.A. 47:1A-5(f).**

N.J.S.A. 47:1A-5(f) states in relevant part:

*The [request] form shall also include the following: (1) specific directions and procedures for requesting a record; (2) a statement as to whether prepayment of fees or a deposit is required; (3) the time period within which the public*

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*agency is required . . . to make the record available; (4) 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; (5) space for the custodian to list reasons if a request is denied in whole or in part; (6) space for the requestor to sign and date the form; (7) space for the custodian to sign and date the form if the request is fulfilled or denied.*

Custodian's request form (Exhibit H) states on its face "See Instructions On the Other Side." Yet, there is nothing printed on the reverse side of the form.

The form violates the above cited statute in several respects:

1. It does not give any "specific directions and procedures for requesting a record."
2. There is no reference to the seven business-day period OPRA requires record custodians to make records available.
3. It does not provide a statement regarding the requestor's right to challenge a denial or the procedure for filing an appeal.
4. There is no space for the custodian to list the reasons for denial.
5. There is no space for the custodian to "sign and date the form if the request is fulfilled or denied." The custodian's signature at the bottom of the form indicates only a) the date the information requested will be ready, b) the estimated number of pages, c) the estimated cost and d) any deposit received.

The most notable deficiency is the form's failure to provide the requestor with "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."<sup>1</sup> This deficiency is significant because absent this disclosure, citizens who are not accustomed to filing record requests might not realize that they have a right to file an appeal, or how to go about it, if their requests are denied. This undermines the purpose of the OPRA.

Requested Relief:

1. That the Council order Custodian to provide me with minutes of the Township Council's closed (executive) sessions held on December 1, 2003 and March 1, 2004 redacted only to the extent

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<sup>1</sup> The "model request form" on the Council's website contains the following: "1. If your request for access to a government record has been denied or unfiled within the time permitted by law, you have a right to challenge the decision by the **Name of Agency** to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint in writing with the Government Records Council (GRC). You may contact the GRC by toll-free telephone at 866-850-0511, by mail at PO Box 819, Trenton, NJ, 08625, by e-mail at [grc@dca.state.nj.us](mailto:grc@dca.state.nj.us), or at their web site at [www.state.nj.us/grc](http://www.state.nj.us/grc). The Council can also answer other questions about the law."

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necessary, if at all.

2. That the Council place Custodian on the "time matrix."
3. That the Council find that Custodian violated OPRA by requiring me to complete her agency's form and to Order Custodian, in the future, to accept and honor written requests for government records even if they are not on her agency's form.
4. That the Council find that the Old Bridge Township's request form violates OPRA and to order that agency to adopt a form that complies with OPRA by a date certain fixed by the Council.
5. Any further relief the Council deems just.

Certification of Service:

On June 13, 2005, I served a copy of this Denial of Access Complaint, together with all the exhibits and attachments by mail to: Rose-Marie Saracino, Clerk, Township of Old Bridge, 1 Old Bridge Plaza, Old Bridge, NJ 08857.

Dated: June 13, 2005

\_\_\_\_\_  
John Paff

# John Paff

2106 S CYPRESS BEND DR – APT 102

POMPANO BEACH, FL 33069-4457

E-MAIL – PAFF@POBOX.COM

MARCH 15, 2005

TELEPHONE – 954-978-6054

FAX – 908-325-0129

Record Custodian  
Township of Old Bridge

(via fax to 732-607-7944)

Dear Sir or Madam:

Please accept this letter as my request for government records pursuant to the Open Public Records Act and the common law. I wish to have paper copies of the following records mailed to me at the above address. Prior to duplicating or sending me the requested documents, kindly inform me by phone, fax or email of their cost and whether or not a deposit or prepayment is required.

1. Minutes from the Township Council's closed (executive) sessions held on December 1, 2003 and March 1, 2004.

2. Draft minutes from the Township Council's March 7, 2005 public meeting.

3. Any government record request submitted to the Township by Linda Seiler on March 4, 2005.

4. Old Bridge Township's form for record requests adopted in accordance with N.J.S.A. 47:1A-5(f).

5. The affidavits of publication and the full text of the notice that was placed in the Township's designated newspaper regarding the adoption of Res. No. 488 on August 16, 2004. **Note: If there is more than one official newspaper, just send me the affidavits and notice text that appeared in one of them.**

6. Copies of any complaints<sup>1</sup> against Robert Schlueter that underlie the professional services contract approved by way of Res. No. 488 on August 16, 2004.

7. Copies of any complaints against Robert Schlueter that underlie the proposed professional services contract listed as Item C5 of the consent agenda of the March 14, 2005 Township Council meeting. **Note: Do not supply any records in response to this request that are duplicative of those furnished in response to the immediately preceding request.**

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<sup>1</sup> By "complaint," I mean as that term is defined in Court Rule 7:2-1. Typically this will be a "CDR-1" or "CDR-2" form.

8. Financial Disclosure Statements filed by the Commissioners of the Old Bridge Township Redevelopment Agency.

9. Most recent Financial Disclosure Statements filed by Eugene McLaughlin and Rory Moore.

10. Any and all notices of scheduled meetings during 2004 and 2005, as required by N.J.S.A. 10:4-18, for the Old Bridge Township Redevelopment Agency.

Thank you for your attention to this matter. I look forward to hearing from you.

Sincerely,

/s/ John Paff

# TOWNSHIP OF OLD BRIDGE

**ROSE-MARIE SARACINO**  
TOWNSHIP CLERK, RMC/CMC

**STELLA WARD**  
DEPUTY TOWNSHIP CLERK, RMC

**WILLIAM A. BAKER**  
COUNCIL PRESIDENT

**PATRICK GILLESPIE**  
VICE PRESIDENT

Council  
REGINALD BUTLER  
G. KEVIN CALOGERA  
RICHARD J. GREENE  
DENNIS M. MAHER  
LUCILLE PANOS  
EDWARD TESTINO  
ROBERT A. VOLKERT

March 16, 2005

John Paff  
P.O. Box 5424  
Somerset, NJ 08875

Dear Mr. Paff:

I am in receipt of a fax. Please be advised that in accordance with OPRA, we are mailing a records request form to be completed by you.

Please be advised that we are placing a records request form to you in today's mail.

Very truly yours,

/s/ Rose-Marie Saracino  
Township Clerk, CMC

Encls. By mail  
Fax: 908-325-0129

# John Paff

P.O. BOX 5424  
SOMERSET, NJ 08875-5424  
E-MAIL - PAFF@POBOX.COM  
MARCH 28, 2005

TELEPHONE - 732-873-1251

FAX - 908-325-0129

Rose-Marie Saracino, Clerk  
Township of Old Bridge (via fax to 732-607-7944)

Dear Ms. Saracino:

Enclosed is your completed records request form with an attached exhibit.

Thank you for your attention to this matter.

Sincerely,

/s/ John Paff

**TOWNSHIP OF OLD BRIDGE**

One Old Bridge Plaza  
Old Bridge, NJ 08857

**REQUEST FOR ACCESS TO GOVERNMENT RECORDS**

SEE INSTRUCTIONS ON THE OTHER SIDE

PLEASE PRINT

Name: **John Paff**  
Address: **P.O. Box 5424**  
**Somerset, NJ 08875**  
Telephone: **732-873-1251**

Information Requested:

- Copy of Minutes (specify board or entity, date, topic or other identifying information)
- Copy of Ordinance or Resolution (specify date, number, or other identifying information)
- Police Accident Report. Identify Accident:
- Other (specify) **See attached "Exhibit A"**
- Information on specific property Address

Municipal Lien Searches are provided by the designated search officer and will be provided within 15 days after the request is received and the fee paid, as provided in N.J.S.A. 54:5-11, et. seq.

- List of Property Owners within 200' Fee:  
As approved by N.J.S.A. 40:55D-12, the fee is the greater of \$25 per name or \$10.00

The applicant hereby acknowledges receipt of a copy of this form with the date on which the information is expected to be available and the estimated cost. The applicant hereby certifies that he or she has not been convicted of any indictable offense under the laws of this State, or any other state or the United States and is not seeking government records containing personal information pertaining to a victim or the victim's family as provided by N.J.S.A. 47:1A-1 et. seq.

This form when signed by the municipal official shall constitute a receipt for any deposit received.

The information will be ready on \_\_\_\_\_  
Estimated Number of Pages \_\_\_\_\_  
Estimated Cost \_\_\_\_\_  
(required when the anticipated cost of reproduction exceeds \$5.00)

\_\_\_\_\_  
Applicant  
Date:

\_\_\_\_\_  
Municipal Official  
Date:

## Exhibit A

1. Minutes from the Township Council's closed (executive) sessions held on December 1, 2003 and March 1, 2004.
2. Draft minutes from the Township Council's March 7, 2005 public meeting.
3. Any government record request submitted to the Township by Linda Seiler on March 4, 2005.
4. The affidavits of publication and the full text of the notice that was placed in the Township's designated newspaper regarding the adoption of Res. No. 488 on August 16, 2004. **Note: If there is more than one official newspaper, just send me the affidavits and notice text that appeared in one of them.**
5. Copies of any complaints<sup>1</sup> against Robert Schlueter that underlie the professional services contract approved by way of Res. No. 488 on August 16, 2004.
6. Copies of any complaints against Robert Schlueter that underlie the proposed professional services contract listed as Item C5 of the consent agenda of the March 14, 2005 Township Council meeting. **Note: Do not supply any records in response to this request that are duplicative of those furnished in response to the immediately preceding request.**
7. Financial Disclosure Statements filed by the Commissioners of the Old Bridge Township Redevelopment Agency.
8. Most recent Financial Disclosure Statements filed by Eugene McLaughlin and Rory Moore.
9. Any and all notices of scheduled meetings during 2004 and 2005, as required by N.J.S.A. 10:4-18, for the Old Bridge Township Redevelopment Agency.

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<sup>1</sup> By "complaint," I mean as that term is defined in Court Rule 7:2-1. Typically this will be a "CDR-1" or "CDR-2" form.

# TOWNSHIP OF OLD BRIDGE

**ROSE-MARIE SARACINO**  
TOWNSHIP CLERK, RMC/CMC

**STELLA WARD**  
DEPUTY TOWNSHIP CLERK, RMC

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RICHARD J. GREENE  
DENNIS M. MAHER  
LUCILLE PANOS  
EDWARD TESTINO  
ROBERT A. VOLKERT

March 23, 2005

John Paff  
P.O. Box 5424  
Somerset, NJ 08875

Dear Mr. Paff:

In response to your request for information received 3/15/05, the cost of this information is \$25.81, which includes the cost of mailing. Payment must be received before this information can be sent to you. Please make your check or money order payable to Township of Old Bridge.

It is noted that you have not yet returned the Request for Information form which was sent to you on 3/16/05.

Very truly yours,

/s/ Rose-Marie Saracino  
Township Clerk, CMC

ga

# John Paff

P.O. BOX 5424  
SOMERSET, NJ 08875-5424  
E-MAIL - PAFF@POBOX.COM  
MARCH 29, 2005

TELEPHONE - 732-873-1251

FAX - 908-325-0129

Rose-Marie Saracino, Clerk  
Township of Old Bridge (via fax to 732-607-7944)

Dear Ms. Saracino:

After faxing my March 28, 2005 letter to you, I received your letter of March 23, 2005. I have signed the form and have mailed it back to you with a \$25.81 check.

Sincerely,

/s/ John Paff

**TOWNSHIP OF OLD BRIDGE**

One Old Bridge Plaza  
Old Bridge, NJ 08857

**REQUEST FOR ACCESS TO GOVERNMENT RECORDS**

SEE INSTRUCTIONS ON THE OTHER SIDE

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Name: **John Paff**  
Address: **P.O. Box 5424**  
**Somerset, NJ 08875**  
Telephone: **732-873-1251**

Information Requested:

- Copy of Minutes (specify board or entity, date, topic or other identifying information)
- Copy of Ordinance or Resolution (specify date, number, or other identifying information)
- Police Accident Report. Identify Accident:
- Other (specify) **See attached "Exhibit A"**
- Information on specific property Address

Municipal Lien Searches are provided by the designated search officer and will be provided within 15 days after the request is received and the fee paid, as provided in N.J.S.A. 54:5-11, et. seq.

- List of Property Owners within 200' Fee:  
As approved by N.J.S.A. 40:55D-12, the fee is the greater of \$25 per name or \$10.00

The applicant hereby acknowledges receipt of a copy of this form with the date on which the information is expected to be available and the estimated cost. The applicant hereby certifies that he or she has not been convicted of any indictable offense under the laws of this State, or any other state or the United States and is not seeking government records containing personal information pertaining to a victim or the victim's family as provided by N.J.S.A. 47:1A-1 et. seq.

This form when signed by the municipal official shall constitute a receipt for any deposit received.

The information will be ready on \_\_\_\_\_  
Estimated Number of Pages \_\_\_\_\_  
Estimated Cost **\$25.81**  
(required when the anticipated cost of reproduction exceeds \$5.00)

**/s/ John Paff**  
Applicant

\_\_\_\_\_  
Municipal Official

## Exhibit A

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4. The affidavits of publication and the full text of the notice that was placed in the Township's designated newspaper regarding the adoption of Res. No. 488 on August 16, 2004. **Note: If there is more than one official newspaper, just send me the affidavits and notice text that appeared in one of them.**
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6. Copies of any complaints against Robert Schlueter that underlie the proposed professional services contract listed as Item C5 of the consent agenda of the March 14, 2005 Township Council meeting. **Note: Do not supply any records in response to this request that are duplicative of those furnished in response to the immediately preceding request.**
7. Financial Disclosure Statements filed by the Commissioners of the Old Bridge Township Redevelopment Agency.
8. Most recent Financial Disclosure Statements filed by Eugene McLaughlin and Rory Moore.
9. Any and all notices of scheduled meetings during 2004 and 2005, as required by N.J.S.A. 10:4-18, for the Old Bridge Township Redevelopment Agency.

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<sup>1</sup> By "complaint," I mean as that term is defined in Court Rule 7:2-1. Typically this will be a "CDR-1" or "CDR-2" form.

**TOWNSHIP OF OLD BRIDGE  
PUBLIC RECORDS REQUEST RESPONSE**

TO: John Paff

DATE: March 23, 2005

The document or documents listed below and requested by you are not being provided because the document or documents are not public records as provided by law, for the following reason(s):

**1. Minutes from the Township Council's closed (executive) sessions held on 12/1/03 and 3/1/04.**

**RESPONSE: Not available. The minutes or other record of these discussions shall be available to be disclosed to the public in sixty (60) months unless a sooner date is determined by a vote of the governing body at a public session.**

**2. Financial Disclosure Statements filed by the Commissioners of the Old Bridge Township Redevelopment Agency.**

**RESPONSE: There are no financial disclosure statements on file for the Old Bridge Redevelopment Agency.**

You have a right to appeal the decision that the document or documents are not public records. You may take your appeal to the Government Records Council or to the New Jersey Superior Court, as provided by N.J.S.A. 47:1A-1 et seq.

Date: April 4, 2005

/s/ Rose-Marie Saracino  
Township Clerk, CMC

Exhibits H1 and H2 represent the two sides of a three-part request form. It is not suitable for duplication so it is not included. The original, three-part form was, however, submitted to the Government Records Council.

# TOWNSHIP OF OLD BRIDGE

**ROSE-MARIE SARACINO**  
TOWNSHIP CLERK, RMC/CMC

**WILLIAM A. BAKER**  
COUNCIL PRESIDENT

**STELLA WARD**  
DEPUTY TOWNSHIP CLERK, RMC

**PATRICK GILLESPIE**  
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DENNIS M. MAHER  
LUCILLE PANOS  
EDWARD TESTINO  
ROBERT A. VOLKERT

June 29, 2005

John Paff  
P.O. Box 5424  
Somerset, NJ 08875

Re: OPRA Request Complaint # 2005-123

Dear Mr. Paff,

We have received a complaint filed by you from the New Jersey Government Records Council. I would like the opportunity to respond to that complaint.

Please be advised that this office uses a request form for all OPRA Requests. Under the GRC Web Page the information states that a request form is required to be filled out for all requests submitted. However, as soon as we received your letter we proceeded with fulfilling your request. We did not wait for the form to begin the research. We forwarded to you a form and asked for you to fill it out and return it to us as a formality. Your request was already in the process of being answered when that letter was written to you. We were in full compliance with the time frame allowed on the other material you requested other than the Executive Minutes.

In regard to the Executive Minute request I since realized that my statement to you should have been clarified. I actually was looking for you to tell me what part of these minutes you were looking for and then I would go before the council for approval of their release. However, since reviewing my original response to you I realized I never finished my statement. I have since realized that these matters have been settled and can be public information at this time. I am putting your request before the Township Council at their next meeting which is Monday, July 11, 2005 for approval by them for the complete release of these documents to you.

Re: Complaint # 2005-123, Page 2

My office receives many requests each day and we do try to respond to each with the recipient being completely satisfied. I do regret that there was a misunderstanding on my part and hope this letter has satisfied any questions and concerns that you may have. If I can be of further assistance to you please do not hesitate to contact my office.

Very truly yours,

TOWNSHIP OF OLD BRIDGE

/s/ Rose-Marie Saracino  
Township Clerk, CMC

/sw

cc: Faxed & Regular Mail to:  
GRC - Ms. Colleen McGann

# John Paff

P.O. Box 5424

Somerset, New Jersey 08875-5424

E-mail – paff@pobox.com

July 6, 2005

Telephone – 732-873-1251

Fax – 908-325-0129

Colleen McGann, Case Manager  
Government Records Council (*via Fax only to 609-633-6337*)

RE: Paff v. Old Bridge, Complaint No. 2005-123

Dear Ms. McGann:

I am in receipt of and wish to respond to Custodian's June 29, 2005 letter.

My complaint asserts that Custodian improperly required me to complete and submit her agency's official OPRA form prior to fulfilling my request. Custodian's June 29, 2005 letter does not dispute this assertion—indeed, Custodian states, albeit incorrectly, that “the GRC Web Page . . . states that a request form is required to be filled out for all requests submitted.” She attempts to defend herself by stating that she began working on my request prior to receiving the completed OPRA form. While this is laudable, it misses the point. The fact remains that she would not have fulfilled my request if I had not completed her form. Accordingly, she has violated OPRA for the reasons stated on page 3 of the Supplement to my Complaint.

As to the executive session minutes, Custodian admits that she failed to either a) provide me with the records, or b) provide me with a lawful reason for their denial, within the statutory seven-day period. Additionally, I question why Custodian is making me wait until a July 11, 2005 vote of the Township Council when she has already “realized that [the matters discussed during closed session] have been settled and be public information at this time.” Why should I have to wait yet another two weeks for records that are already admittedly public? What provision of law places the Township Council's asserted need to formally approve the release of its closed session minutes over OPRA's requirement that “government records shall be readily accessible” N.J.S.A. 47:1A-1?

Finally, Custodian's June 29, 2005 letter doesn't defend against that part of my complaint regarding the deficiency of her agency's OPRA request form. Nor does it promise that the form will be amended to bring it into compliance with OPRA. All I can gather from this omission is that Custodian realizes that her form is legally insufficient but won't make it compliant until ordered to do so by the Council.

Thank you for your attention to this matter.

Sincerely,

/s/ John Paff

cc. Rose-Marie Saracino (*via fax only to 732-607-7944*)

# TOWNSHIP OF OLD BRIDGE

**ROSE-MARIE SARACINO**  
TOWNSHIP CLERK, RMC/CMC

**WILLIAM A. BAKER**  
COUNCIL PRESIDENT

**STELLA WARD**  
DEPUTY TOWNSHIP CLERK, RMC

**PATRICK GILLESPIE**  
VICE PRESIDENT

Council  
REGINALD BUTLER  
G. KEVIN CALOGERA  
RICHARD J. GREENE  
DENNIS M. MAHER  
LUCILLE PANOS  
EDWARD TESTINO  
ROBERT A. VOLKERT

July 14, 2005

John Paff  
P.O. Box 5424  
Somerset, NJ 08875

Re: OPRA Request Complaint # 2005-123

Dear Mr. Paff,

Please be advised that your request for the Executive Session Minutes of 12/3/03 and 3/1/04 was put before the Township Council at the Council Meeting of July 11, 2005 for their approval to release them to you. The Township of Old Bridge has an ordinance (a copy of which I have enclosed) that has been in effect since April of 1990 that states Executive Session Minutes can only be released to a Council member. Any other requests have to go before them and a formal motion and vote of an absolute majority of the Council has to be taken before any can be released to anyone other than a council member. This item was up for a vote on July 11th and the Township Council voted to "Table" the item.

The Township Attorney and myself are working further on this matter so we can comply with your request. However, we will need a little more time in doing so. My office has been in contact with Colleen McGann of the Government Records Council several times and I will continue to work to try to get you the information you have requested.

If you have any further questions regarding this matter please feel free to contact me.

Very truly yours,

/s/ Rose-Marie Saracino  
Township Clerk, CMC  
/sw

cc: Government Records Council Colleen McGann  
Township Attorney, Jerome J. Convery

OLD BRIDGE TOWNSHIP  
ORDINANCE NO. 6-90

AN ORDINANCE AMENDING CHAPTER II, ADMINISTRATION,  
SECTION 2-3.8 OF REVISED GENERAL ORDINANCES OF  
THE TOWNSHIP OF OLD BRIDGE.

BE IT ORDAINED, by the Township Council of the Township of Old Bridge, Middlesex County, New Jersey, as follows:

Section 1. Chapter II, ADMINISTRATION. Section 2-3.8 is amended as follows: NEW: Section 3.8(f) Executive Sessions. All Executive Sessions of the Council shall be mechanically recorded and transcribed verbatim in addition to minutes which must be made according to general law. The tapes and transcripts of such recordings shall be maintained by the Clerk. The tapes and transcripts remain the privileged property of the Council, shall remain in the custody of the Clerk, and shall not be released to anyone except a Council member. All other requests for release must be made upon formal motion and vote of an absolute majority of the Council.

Section II. All ordinances or parts of ordinances inconsistent with or in conflict with this ordinance are hereby repealed to the extent of such inconsistency.

Section III. If any section, paragraph, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision so adjudged and the remainder of the ordinance shall be deemed valid and effective.

Section IV. This ordinance shall take effect twenty (20) days after publication thereof after final adoption, unless the Council shall adopt a resolution at final adoption declaring an emergency and at least two-thirds of all the members of the Council shall vote in favor of such resolution pursuant to N.J.S. 40:69A-181; and upon this ordinance taking effect shall not be retroactive

FIRST READING: MARCH 5, 1990

Moved by Councilman Hoff, seconded by Councilwoman Lane and so ordered on the following roll call vote:

AYES: President Miller, Councilmen Bush, Butler, English, Hoff, Mannino, Councilwomen Cannon, English, Lane.

NAYS: None.

SECOND READING: MARCH 19, 1990

Moved by Councilman Hoff, seconded by Councilman Bush and so ordered on the following roll call vote:

AYES: President Miller, Councilmen Bush, Butler, English, Hoff, Mannino, Councilwomen Cannon, English, Lane.

NAYS: None.

ATTEST:

/s/ Mary M. Brown, Clerk

/s/ R. Lane Miller, Council President

Approved:

/s/ Arthur M. Haney, Mayor

Approved as to form and sufficiency:

DEPARTMENT OF LAW

/s/ Ronald L. Reisner, Esq.

Approved on first reading: March 5, 1990

Published: March 9, 1990

Approved on second reading: March 19, 1990

Published: March 22, 1990

Effective: April 11, 1990

## John Paff

P.O. Box 5424

Somerset, New Jersey 08875-5424

Telephone – 732-873-1251

E-mail – paff@pobox.com

Fax – 908-325-0129

July 16, 2005

Colleen McGann, Case Manager

Government Records Council

P.O. Box 819

Trenton, NJ 08625-0819

(via Email PDF attachment)

RE: Paff v. Old Bridge, Complaint No. 2005-123

Dear Ms. McGann:

I am in receipt of the Custodian's July 14, 2005 letter and Ord. 6-90, copies of which were sent to you and Township Attorney Jerome J. Convery.

In her letter, Ms. Saracino incorrectly states that Ord. 6-90 "states that Executive Session minutes can only be released to a Council member" and that "other requests have to . . . [receive an affirmative] vote of an absolute majority of the Council." In fact, the ordinance requires the Council's executive sessions to be "recorded and transcribed verbatim **in addition to** the minutes which must be made according to general law" (emphasis supplied). The ordinance restricts the release of only those "tapes and transcripts," **not** the minutes that N.J.S.A. 10:4-14 requires to be kept. In sum, the ordinance does not in any way impact upon my request.

Also, I have enclosed for your review an unofficial transcript of the July 11, 2005 Council meeting that Ms. Saracino refers to in her letter. I include this mainly because of this astonishing statement made by Councilman Gillespie:

*I could foresee by going down this road, and by approving this resolution, we could open the floodgates and we would be inundated with these requests. We would get O. P. R. A. requests for all of our minutes from the past 5 years - all of them and then rather than having Mr. Convery and his legal department spending time on the things we need them to spend them on, they could be faced with, they could be faced with substantial amounts of their time reviewing these minutes to make sure that we don't inadvertently give away the store.*

Apparently, Councilman Gillespie is concerned that granting my request could generate additional requests by other citizens who wish to view council minutes and

that such could place a burden upon the Township's attorney. I believe that Mr. Gillespie's priorities are misplaced. Citizen involvement in local government is to be encouraged and Mr. Gillespie should be working to maximize the quantity of Township information that is public so as to better inform the citizens and make their involvement more meaningful.

Thank you for your attention to this matter.

Sincerely,

/s/ John Paff

cc. Rose-Marie Saracino, Clerk, w/ enc., via Fax  
Jerome J. Convery, Esq., w/ enc., via Fax

Council Members:

- \* Ward 1: Robert (Bob) Volkert
- \* Ward 2: William (Bill) Baker (Council President)
- \* Ward 3: Reginald (Reggie) Butler
- \* Ward 4: G. Kevin Calogera
- \* Ward 5: Richard (Rich)Greene
- \* Ward 6: Lucille Oanos
- \* At-Large: Patrick (Pat) Gillespie
- \* At-Large: Dennis Maher
- \* At-Large: Edward (Ed) Testino

Township Attorney: Jerome (Jerry) Convery

Background Info:

The resolution was separated from the Consent Agenda by Councilman Patrick Gillespie so that it could be discussed before being voted on.

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Gillespie: Mr. Chairman, I am, I have deep deep concerns & I 'm strongly opposed to this resolution and I'll really for two reasons. Number 1, um, the last time that we released executive session minutes was because we were faced with a subpoena from the Attorney General's office & while supporting that wholeheartedly, this is a far different situation and the request that we have here, to release our exec session minutes should be evaluated in a much different context than the prior requests that we got. And this isn't a reflection on the Clerk's office or the Attorney's office, but I could foresee two things happening.

One, we could inadvertently give away something important to us in terms of our contract labor negotiations, in terms of our long-term strategy, when we pursue condemnation proceedings, in terms of our long-term litigation strategy, there could be items gleaned from the release of these minutes that we could inadvertently be giving away our position that would result in an adverse judgment to the taxpayers, or some other adverse judgment where we would wind up costing us a case, and by virtue of losing a case, it would invariably end up costing the taxpayers more money.

The second part that I am concerned about, and I don't disagree with the Attorney's methodology, however, I could foresee by going down this road, and by approving this resolution, we could open the floodgates and we would be inundated with these requests. We would get O. P. R. A. requests for all of our minutes from the past 5 years - all of them and then rather than having Mr. Convery and his legal department spending time on the things we need them to spend them on, they could be faced with, they could be faced with substantial amounts of their time reviewing these minutes to make sure that we don't inadvertently give away the store.

I am, you know Mr. Chairman, uh, you know O. P. R. A is a great law. Uh, it's done a lot of good in this state &, uh you know, we should be complying with it. I do not believe that this request in any way, shape of form, because these are personnel matters or by other, by

definition, these are not public records I guess is the point I am trying to say. These are discussions that we have with our attorneys, where there is attorney-client privilege & other things discussed. Um, I do not believe that this fits under the category of a public record. I do not believe that we should change our long-standing policy of releasing minutes after five years or if we decide on a case-by-case basis, like we did with the Attorney General's Office, to release them sooner. Um, Mr. Chairman, if we want to discuss this now, that's fine, but prior to the end of the discussion I am going to offer a motion to table.

Council President Baker: Well, alright. Mr. Convery

Atty Convery: I am not disagreeing what, uh, with what Pat is saying. I'd just like to point out that we have, uh, an Open Public Meetings Act which allows us to go into Executive Session and for those minutes to be kept private while there is ongoing litigation or while there is ongoing negotiations. The issue becomes once those negotiations have been completed, or the litigation has been completed, uh, should the minutes of the Executive Session be released, and if so, what portion of those minutes. So I agree with Patrick that there may be issues in there, and I haven't seen them because the Clerk's office won't release them to anyone without Council authorization, so I haven't reviewed these minutes. But, it may be that there are issues that are considered lawyer-client privilege. It may be that there are issues w/in the minutes relating to long-term, uh, negotiations or tactics for negotiations which would not have to be released. Ah, in regard the Sommers matter, yes, it has been settled, but uh it may be that the Sommers matter comes back to court because the settlement is very complex and if the settlement were to breakdown at any point, it could wind up back in court. So there are legitimate reasons not to release those records. The, the, uh, fact is that the Open Public Meetings Act seems to conflict with the Open Public Records Act in this regard.

Uh, what I put in the Resolution is that the records would be released, but they'd be released to me as the Township Attorney to see whether or not there were any other exceptions to these laws that would keep them from being public. For example, if the, if the records said, somebody said, 'I am going to move to settle the case,' that fact alone may not be privileged, but other discussions with the lawyer may be lawyer-client privilege. Negotiations are discussed regarding how to deal with the P. B. A. or F. O. P. could be privileged.

Awh, on the other hand, I'd like you know that the person requesting these records has already complained to the Government Records Council, and we have to respond to the Government Records Council. If this is tabled, I would like it be put on for the next meeting, so that I could go back to the Government Records Council and discuss with the state the concerns that members have.

Baker: I don't have enough information, for me, to make a decision, so I'll accept Mr. Gillespie's motion to table and will ask for a second.

Butler: I will second it, Mr. President

Baker: Seconded by Mr. Butler. Roll call.

Calogera: Excuse me. I want to get discussion from some people in this room

Baker: Wait, Hold on. Uh, Mr. Gillespie I would like you to withdraw your table.

Gillespie: Ok

Calogera : Thank you Patrick,

Baker: Mr. Butler, I would like you to withdraw your second.

Butler: I'll do that.

Baker: And we'd like to hear from Mr. Calogera.

Calogera: My concern is that I think O.P.R.A is very important issue, you know for the public, and I think that we should make records available. Um, you know, I don't see any way on being able to deal with this if we are tabling it now, unless we have Mr. Convery, or somebody go through it and go into closed session at the next meeting and see what the concerns are that we cannot make public. And, if these issues are/have already been settled with P. B. A. contracts, Woodland Trails, Sommers, unless there is other things in there I have no objection to making these public. Now, if there is a strategic question as to how we negotiated, that is a problem for somebody on the Council to release I could understand that, but I personally need to be made aware what those issues are before I can decide whether or not to release these, because in the absence of that, my first preference is to release public records; I have no problem with that.

NOTE: The council ended up "tabling" the release of the records.

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
April 11, 2006 Council Meeting**

**John Paff  
Complainant**

**GRC Complaint No. 2005-123**

v.

**Township of Old Bridge  
Custodian of Records**

**Records Relevant to Complaint:**

Minutes from the Township Council's closed (executive) sessions held on December 1, 2003 and March 1, 2004.<sup>1</sup>

**Request Made:** March 15, 2005; March 28, 2005; March 29, 2005

**Response Made:** March 16, 2005; March 23, 2005; April 4, 2005

**Custodian:** Rose Marie Saracino

**COUNCIL Complaint filed:** June 13, 2005

**Background**

**March 15, 2005**

Complainant's records request.<sup>2</sup> The Complainant seeks a copy of minutes, OPRA requests, OPRA form, affidavits, complaints, Financial Disclosure Statements, and notices of meetings for the Redevelopment Agency.

**March 16, 2005**

Custodian's letter to the Complainant. The Custodian states that a records request form is being forwarded to be completed by the Complainant pursuant to the Open Public Records Act (OPRA).

**March 23, 2005**

Custodian's response to Complainant's March 15, 2005 request. The Custodian indicates that the cost for the request is \$25.81 including the cost of mailing and payment must be received before the documents will be forwarded. Additionally, the Custodian states that the "Request for Information" form sent on March 16, 2005 has not yet been returned.

**March 28, 2005**

Complainant's records request. The Complainant seeks a copy of minutes, OPRA requests, affidavits, complaints, Financial Disclosure Statements, and notices of meetings for the Redevelopment Agency.<sup>3</sup>

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<sup>1</sup> Other records were requested and disclosed in accordance with OPRA requirements.

<sup>2</sup> Request not submitted on the agency's OPRA request form.

### **March 29, 2005**

Complainant's facsimile to the Custodian. The Complainant indicates that he is faxing the March 28, 2005 letter to the Custodian and states that the form has been completed and a check for \$25.81 has been forwarded.

### **March 29, 2005**

Complainant's written OPRA Request. The Complainant seeks a copy of minutes, OPRA requests, affidavits, complaints, Financial Disclosure Statements, and notices of meetings for the Redevelopment Agency<sup>4</sup> and has attached a check for \$25.81.

### **April 4, 2005**

Custodian's "Public Records Request Response" forwarded to the Complainant. The Custodian indicates that the Township Council's closed (executive) sessions held on December 1, 2003 and March 1, 2004 are not available. The Custodian asserts that "the minutes or other record of these discussions shall be available to be disclosed to the public in sixty (60) months unless a sooner date is determined by the vote of a governing body at a public session." The Custodian also indicates that there are no Financial Disclosure Statements on file for the Old Bridge Township Redevelopment Agency.

### **June 13, 2005**

Complainant's Denial of Access Complaint with the following attachments:

- March 15, 2005 Complainant's records request
- March 16, 2005 Custodian's letter to the Complainant
- March 23, 2005 Custodian's response to Complainant's March 15, 2005 request
- March 28, 2005 Complainant's records request
- March 29, 2005 Complainant's facsimile to the Custodian
- March 29, 2005 Complainant's written OPRA Request
- April 4, 2005 Custodian's "Public Records Request Response" forwarded to the Complainant.

The Complainant states that the issues in this Complaint include; (1) that Custodian improperly denied his request for access to the "minutes from the Township Council's closed (executive) sessions held on December 1, 2003 and March 1, 2004," (2) the Custodian required the Complainant to complete OPRA request form, and (3) the Custodian's OPRA request form does not comply with N.J.S.A. 47:1A-5.f.

The Complainant states that executive session minutes are government records pursuant to OPRA and cites both Davis v. Rumsen Fair-Haven Board of Education, GRC Case No. 2003-56 (December 2003) and Payton v. New Jersey Turnpike Authority, 148 N.J. 524, 556-57 (1997) to support this assertion. The Complainant states that there is no indication that the requested executive session minutes fall under any of the exemptions to disclosure that are indicated in the Open Public Meeting Act (OPMA) or any other law. The Complainant asserts that the Custodian is responsible for supplying a legal

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<sup>3</sup> The Complainant's request is the same as the one submitted on March 15, 2005 except he is no longer seeking the request form.

<sup>4</sup> As indicated in the facsimile to the Custodian on March 29, 2005.

justification for the denial of access to the requested minutes as prescribed by N.J.S.A. 47:1A-6 but has not done so. The Complainant feels that the Custodian has failed to meet the burden of proving that the denial of access to the entirety of the requested meeting minutes was lawful.

The Complainant states that according to the Government Records Council (“GRC”) website the Custodian is required to adopt a form but the “[C]ustodian should accept any communication that is clearly a request for records if it contains the information necessary for that [C]ustodian to fulfill the request, even if it is not submitted on the [C]ustodian’s ‘official’ OPRA request form.” The Complainant argues that the Custodian required him to fill out an OPRA request form in order to obtain records as evidenced in her March 16, 2005 and March 23, 2005 letters to the Complainant, even though his letters qualify as OPRA requests and contain all information necessary to fulfill the request.

The Complainant also takes issue with the Custodian’s OPRA request form. The Complainant alleges that the OPRA request form used by the Township does not give any specific procedures for requesting a record, does not reference the seven business-day period required for a response, does not outline the requestors right to challenge a denial, does not have a space for the reasons for denial and does not contain space for the Custodian to sign and date the form if the request is fulfilled or denied pursuant to N.J.S.A. 47:1A-5.f. The Complainant states that the deficiencies undermine the purpose of OPRA, in particular the absence of a notice of the requestor’s right to appeal because the requestor may not know of their rights without that disclosure indicated specifically on the form.

The Complainant asks that; (1) the GRC order disclosure of the meeting minutes, (2) timeliness of the response be addressed, (3) the GRC find the Custodian in violation of OPRA for requiring that the form be completed and; (4) the GRC find that the Custodian’s form violates OPRA.

### **June 28, 2005**

Offer of mediation forwarded to both parties.<sup>5</sup>

### **June 29, 2005**

Custodian’s letter to the Complainant. The Custodian indicates to the Complainant that the request form was a formality and research had begun as soon as the Complainant’s first request was made. The Custodian states that the GRC webpage indicates that a request form is required to be filled out for OPRA requests and the Township uses a request form for all requests. The Custodian also indicates that the Custodian was in “full compliance on the time frame allowed on the other material [the Complainant] requested other than the [e]xecutive [m]inutes.” The Custodian also states that her statement to the Complainant should have been clarified and she was actually looking for the Complainant to tell her which parts of the minutes he was looking for so that she may have them approved for release. The Custodian states she now realizes that the matters have been settled and she is “putting [the Complainant’s] request before the Township Council at their next meeting which is Monday July 11<sup>th</sup>, 2005 for approval by them for the complete release of these documents to [the Complainant].”

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<sup>5</sup> Neither party agreed to mediate this complaint.

**July 6, 2005**

Complainant's letter to the GRC. The Complainant states that while the Custodian indicates that research began for his request prior to receiving the completed form the fact still remains that without the completed form he would not have received the records he requested. The Complainant also questions why he is being made to wait until the approval of the requested minutes by Township Council to receive the records when the Custodian has admitted that the matters have concluded. The Complainant questions, "[w]hat provision of law places the Township Council's asserted need to formally approve the release of its closed session minutes over OPRA's requirement that 'government records shall be readily accessible' pursuant to N.J.S.A. 47:1A-1. Additionally, the Complainant points out that the Custodian does not address the compliance of the request form and so he "gather[s] from this omission that the Custodian realizes that her form is legally insufficient but won't make it compliant until ordered to do so by the GRC."

**July 12, 2005**

Custodian counsel's memo to the Custodian. The Custodian's counsel states that he cannot give legal advice as to whether or not any of the information contained in the requested documents are an exception to OPRA requirements. The Custodian's counsel further advises that the matter of the release of said minutes should be discussed as an executive session issue at the August 1, 2005 meeting.

**July 14, 2005**

Deputy Clerk, Stella Ward's memo to the Custodian's counsel. The Deputy Clerk copies the Custodian's counsel on the June 29, 2005 Custodian's letter to the Complainant.

**July 14, 2005**

Custodian's letter to the Complainant. The Custodian states that the Township Council discussed his request at the July 11, 2005 Council meeting and the Township Council voted to "table" the vote on whether or not to release the documents however she and counsel are working to obtain the requested records for the Complainant. Furthermore, the Custodian asserts that the Township has an ordinance in place<sup>6</sup> that "states [e]xecutive [s]ession [m]inutes can only be released to a Council member."

**July 14, 2005**

Deputy Clerk, Stella Ward's letter to the Council President, William Baker. The Deputy Clerk is forwarding the subject requested minutes for review and advice on how to proceed with the request.

**July 14, 2005**

Deputy Clerk, Stella Ward's letter to the GRC staff with the following attachments:

- July 11, 2005 draft resolution to approve the release of the requested minutes<sup>7</sup>

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<sup>6</sup> Forwarded as an attachment to this letter.

<sup>7</sup> Tabled at the July 11, 2005 meeting.

- July 12, 2005 Custodian’s counsel’s memo to the Custodian
- July 14, 2005 Custodian’s letter to the Complainant.

The Deputy Clerk states that the Township Attorney is drawing up an amendment to the ordinance which will allow the executive session minutes to be released to the Township Attorney, Mayor and Business Administrator. The Township attorney feels that this may have allowed them to make a more informed decision as to what could be released for an OPRA request. The Deputy Clerk states that the Township has not taken this request lightly and is currently making every effort to comply with the request.

### **July 14, 2005**

Custodian’s Statement of Information with the following attachments:

- March 15, 2005 Complainant’s records request
- April 4, 2005 Custodian’s “Public Records Request Response” forwarded to the Complainant
- June 29, 2005 Custodian’s letter to the Complainant
- July 12, 2005 Custodian’s counsel’s memo to the Custodian
- July 14, 2005 Deputy Clerk, Stella Ward’s memo to the Custodian’s counsel
- July 14, 2005 Custodian’s letter to the Complainant
- July 14, 2005 Deputy Clerk, Stella Ward’s letter to the Council President, William Baker.

The Custodian states that the Township has an ordinance that indicates that the Council must approve the release of the Executive session minutes to anyone other than a Council member. The Custodian indicates that this item was listed on the agenda for the July 11, 2005 meeting but was tabled by the Council. The Custodian states, “we are working with the Township Attorney and the Council President trying to amend the Township Ordinance so we can try to comply with OPRA requestors. We will need additional time to work on this request.”

### **July 16, 2005**

Complainant’s letter to the GRC. The Complainant contends that the ordinance to which the Custodian refers actually only restricts the release of the transcripts and tapes but not the minutes required to be maintained pursuant to N.J.S.A.10:4-14 which are the subject of this request. The Complainant goes on to make allegations based on an “unofficial transcript of the July 11, 2005 council meeting” regarding the “concerns” of a Council member regarding this request however they are not subject of this Complaint.

### **Analysis**

**WHETHER the Custodian unlawfully denied access to the requested executive session minutes pursuant to OPRA?**

OPRA provides that

“...government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions...”  
N.J.S.A. 47:1A-1.

Additionally, OPRA defines a government record as

“...any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file... or that has been received in the course of his or its official business... The terms shall not include inter-agency or intra-agency advisory, consultative, or deliberative material.” N.J.S.A. 47:1A-1.1.

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states

“...[t]he public agency shall have the burden of proving that the denial of access is authorized by law...” N.J.S.A. 47:1A-6.

OPRA states in part

“...[t]he provisions of [OPRA] shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA]; any other statute; resolution of either or both Houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order...” N.J.S.A. 47:1A-9.a

The Open Public Meetings Act requires that

“[e]ach public body shall keep reasonably comprehensible minutes *of all its meetings* showing the time and place, the members present, the subjects considered, the actions taken, the vote of each member, and any other information required to be shown in the minutes by law, *which shall be promptly available to the public to the extent that making such matters public shall not be inconsistent with section 7 of this act.*” (Emphasis added.) N.J.S.A.10:4-14.

And, OPRA also states

“...[a] Custodian shall promptly comply with a request to inspect, examine, copy, or provide a copy of a government record. *If the Custodian is unable to comply with a request for access, the Custodian shall indicate*

*the specific basis therefor* on the request form and promptly return it to the requestor...” N.J.S.A. 47:1A-5.g.

The Complainant states that executive session minutes are government records pursuant to OPRA. The Complainant states that there is no indication that the requested executive session minutes fall under any of the exemptions to disclosure that are indicated in the OPMA or any other law. The Custodian states that the Township has an ordinance that indicates that the Township Council must approve the release of the executive session minutes to anyone other than a Council member.

N.J.S.A. 47:1A-9.a states that the provisions of OPRA may be superseded by an exemption pursuant to any other statute, resolution, Executive Order, rules of Court or federal law. Therefore, the ordinance cited by the Custodian, which requires the approval of the Township Council for the release of minutes, does not abrogate the provisions of OPRA as indicated in N.J.S.A. 47:1A-9.a.

OPRA places the burden of proving that a denial of access is permitted by law on the Custodian however, the Custodian has not provided any statutory exemption to the requested executive session minutes. Thus the Custodian has not lawfully denied access to the executive session minutes.

Based on the fact that the Custodian has not provided a lawful basis for denying access to the executive session minutes pursuant to N.J.S.A. 47:1A-6, the Custodian should disclose the requested December 1, 2003 and March 1, 2004 executive session minutes with appropriate redactions as necessary. The legal basis for any redactions must be explained pursuant to N.J.S.A. 47:1A-5.g.

**WHETHER the Custodian properly responded to the Complainant’s records request within the statutorily required time period pursuant to OPRA?**

OPRA provides that

“[u]nless a shorter time period is otherwise provided by statute, regulation, or executive order, a Custodian of a government record shall grant access to a government record or deny a request for access to a government record as soon as possible, but not later than seven business days after receiving the request, provided that the record is currently available and not in storage or archived...” N.J.S.A. 47:1A-5.i.

And, OPRA also states

“...[a] Custodian shall promptly comply with a request to inspect, examine, copy, or provide a copy of a government record. *If the Custodian is unable to comply with a request for access, the Custodian shall indicate the specific basis therefor* on the request form and promptly return it to the requestor.” N.J.S.A. 47:1A-5.g.

The Complainant asserts that the Custodian is responsible for supplying a legal justification for the denial of access to the requested minutes as prescribed by N.J.S.A. 47:1A-6 but has not done so. In the Custodian's response to the Complainant's request the Custodian indicates that the Township Council's closed (executive) sessions held on December 1, 2003 and March 1, 2004 are not available. The Custodian asserts that "the minutes or other record of these discussions shall be available to be disclosed to the public in sixty (60) months unless a sooner date is determined by the vote of a governing body at a public session."

OPRA requires Custodian's to either grant or deny access as soon as possible but no later than seven business days. OPRA allows the Custodian to deny access to records under those circumstances in which the records requested are exempt from access, under OPRA or any other law. If a Custodian asserts a exemption under the law the Custodian is required to notify the Complainant in writing of the specific legal basis for the denial. In Gober v. City of Burlington, GRC Case No. 2003-139 (April 2004) the GRC found that the Custodian's assertion that certain of the information requested by the Complainant is "privileged" is so vague that the existence of an applicable exemption cannot be ascertained. Because the Open Public Records Act presumes that a government record is subject to public access unless an exemption exists, it is appropriate to order that access be granted unless an appropriate exemption is clearly identified by the Custodian." The Custodian did inform the Complainant that the documents are not available and that they "shall be available to be disclosed to the public in sixty (60) months." However, this response is insufficient as it does not indicate a specific lawful basis for denying access as required pursuant to N.J.S.A. 47:1A-5.g.

Therefore the Custodian has violated N.J.S.A. 47:1A-5.i. and N.J.S.A. 47: 1A-5.g. in not providing a specific basis for the denial of access to the requested executive session minutes.

**WHETHER the Custodian acted properly in requiring that the Complainant complete an OPRA Request form for this records request?**

The Complainant states that the Custodian is required to adopt a from but the "[C]ustodian should accept any communication that is clearly a request for records if it contains the information necessary for that [C]ustodian to fulfill the request, even if it is not submitted on the [C]ustodian's 'official' OPRA request form." The Complainant argues that the Custodian required him to fill out an OPRA request form in order to obtain records even though the Complainant asserts that his letters qualify as OPRA requests and contain all information necessary to fulfill the request. The Custodian indicates that the request form was a formality and research had begun as soon as the Complainant's first request was made. The Custodian states that the GRC webpage indicates that a request form is required to be filled out for OPRA requests and the Township uses a request form for all requests.

Review of the OPRA statute and its legislative intent lead the Council to conclude that use of the request form is required for all requestors. The statute provides that the Custodian "shall adopt a form for the use of any person who requests access to a

government record held or controlled by the public agency.” N.J.S.A. 47:1A-5.f. The statute specifically prescribes what must be on the form:

- (1) space for the name, address and phone number of the requestor and a brief description of the government record sought;
- (2) space for the Custodian to indicate which record will be made available, when the record will be available, and the fees to be charged;
- (3) specific directions and procedures for requesting a record;
- (4) a statement as to whether prepayment of fees for a deposit is required;
- (5) the time period in which the public agency is required by OPRA to make the record available;
- (6) 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;
- (7) space for the Custodian to list reasons if a request is denied in whole or in part;
- (8) space for the requestor to sign and date the form;
- (9) space for the Custodian to sign and date the form if the request is fulfilled or denied.

*Id.*

Although the statute does not expressly state that OPRA requests must be on the form adopted by the agency pursuant to N.J.S.A. 47:1A-5.f., principles of statutory construction show that the Legislature intended use of this form by all requestors to be mandatory. In interpreting a statute, it is axiomatic that “each part or section [of the statute] should be construed in connection with every other part or section so as to produce a harmonious whole.” Matturi v. Bd. of Trustees of JRS, 173 N.J. 368, 383 (2002), quoting In re Passaic Cty. Utilities Auth., 164 N.J. 270, 300 (2000). In addition, a construction which renders statutory language meaningless must be avoided. Bergen Comm. Bank v. Sisler, 157 N.J. 188, 204 (1999). *See also* G.S. v. Dept. of Human Serv., 157 N.J. 161, 172 (1999). (a statute should be interpreted so as to give effect to all of its provisions, without rendering any language inoperative, superfluous, void, or insignificant).

As noted, N.J.S.A. 47:1A-5.f. requires that Custodians adopt a request form, and sets forth a detailed list of what the form must contain. The next subsection of the statute provides:

If the Custodian is unable to comply with a request for access, the Custodian *shall indicate the specific basis therefor on the request form and promptly return it to the requestor.* The Custodian *shall sign and date the form and provide the requestor with a copy thereof.* (Emphasis added.) N.J.S.A. 47:1A-5.g.

The form to which N.J.S.A. 47:1A-5.g. refers is the form required by N.J.S.A. 47:1A-5.f. In providing, in 5.g., that the Custodian “shall” sign and date the form, indicate the basis for denial on the form, and return the form to the requestor, the Legislature evidenced its clear intent that it is mandatory for the form to be used by

requestors. *See Harvey v. Essex Cty. Bd. Of Freeholders*, 30 N.J. 381, 391-92 (1959) (the word “shall” in a statute is generally mandatory). The express requirement that the Custodian use the request form in denying an OPRA request, construed together with the preceding statutory requirement that the Custodian adopt a request form, demonstrates that the Legislature intended that this form would be used for all OPRA requests. If all requestors are not required to submit requests on the form prescribed by the statute, then the statutory provisions requiring the Custodian to sign and date the form, and return it to the requestor, would be meaningless. Indeed, a Custodian would be unable to fulfill these express requirements of N.J.S.A. 47:1A-5.g. if the requestor does not use the form in submitting his request.

Accordingly, nothing in OPRA suggests that some requestors may forgo using the official request form. In enacting the form requirement, the Legislature has expressed its policy that use of the form promotes clarity and efficiency in responding to OPRA requests, consistent with OPRA’s central purpose of making government records “readily accessible” to requestors. N.J.S.A. 47:1A-1.

The Appellate Division has indicated that the statute’s form requirement serves the additional purpose of prompting the legislative policy that a requestor must specifically describe identifiable records sought. *See Mag Entertainment LLC v. Div. of ABC*, 375 N.J. Super 534, 546 (App. Div. 2005) (an open-ended request that fails to identify records with particularity is invalid). In *Bent v. Twp. of Stafford Police Dept.*, 381 N.J. Super. 30, 33 (App. Div. 2005), the Court held that the requestor’s general request for information violated this policy and was therefore invalid. In reaching this conclusion, the Court noted that OPRA mandates that the request form provide space for a “brief description” of the record request. *Id.* Similarly, in *Gannett New Jersey Partners L.P. v. County of Middlesex*, 379 N.J. Super. 205, 213 (App. Div. 2005), the Court specifically pointed to the same statutory request form requirement in determining that OPRA does not authorize requestors to make blanket requests for agency records.

Accordingly, based on the language of the statute, as well as judicial recognition of the importance of the statutory request form, it is determined that the statute requires all requestors to submit OPRA requests on an agency’s official OPRA records request form. OPRA’s provisions come into play only where a request for records is submitted on an agency’s official OPRA records request form. Therefore, the Complainant’s records request was not a valid OPRA request and as such Custodian acted properly in requiring the Complainant to complete an OPRA request form.

Based on N.J.S.A. 47:1A-5.f. and N.J.S.A. 47:1A-5.g. the Custodian acted properly in requiring the Complainant to complete the agency’s adopted OPRA request form.

### **WHETHER the Custodian’s adopted request form complies with OPRA?**

OPRA explicitly stipulates what must be included in an agency’s OPRA records request form. Specifically OPRA states

“The Custodian of a public agency shall adopt a form for the use of any person who requests access to a government record held or controlled by the public agency. *The form shall provide space for the name, address, and phone number of the requestor and a brief description of the government record sought. The form shall include space for the custodian to indicate which record will be made available, when the record will be available, and the fees to be charged. The form shall also include the following: (1) specific directions and procedures for requesting a record; (2) a statement as to whether prepayment of fees or a deposit is required; (3) the time period within which the public agency is required by [OPRA] as amended and supplemented, to make the record available; (4) 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; (5) space for the custodian to list reasons if a request is denied in whole or in part; (6) space for the requestor to sign and date the form; (7) space for the custodian to sign and date the form if the request is fulfilled or denied...*” (Emphasis added.) N.J.S.A. 47:1A-5.f.

The Complainant takes issue with the Custodian’s OPRA request form. The Complainant alleges that the OPRA request form used by the Township (1) does not give any specific procedures for requesting a record, (2) does not reference the seven (7) business-day period required for a response, (3) does not outline the requestors right to challenge a denial, (4) does not have a space for the reasons for denial and (5) does not contain space for the Custodian to sign and date the form if the request is fulfilled or denied pursuant to N.J.S.A. 47:1A-5.f. The Custodian’s request form at the time of the request was submitted by the Complainant as part of the Denial of Access Complaint.

All Custodians are required to adopt a request form which must include at least those components which are stated in OPRA. Custodian’s who do not have a request form that is compliant with N.J.S.A. 47:1A-5.f may adopt the model request form located on the GRC website at <http://www.nj.gov/grc/modelrequestform.html>.<sup>8</sup>

After review of the Township of Old Bridge Request for Access to Government Records form (submitted the Council with the Complainant’s Denial of Access Complaint) it is found that the form does include a space for the name, address and phone number as well as a place for the requestor to describe the records sought. The form also contains space to indicate when the record will be available, the fees to be charged and a statement as to whether a prepayment of fees or deposit it required. Finally the form does include space for the requestor and the Custodian to sign and date the form.

An agency’s form should encompass all of the information statutorily required under N.J.S.A. 47:1A-5.f however the form in question does not include a number of elements stated in OPRA. The Township of Old Bridge Request for Access to Government Records form lacks specific directions and procedures for requesting a record and space for the Custodian to indicate which record will be made available. The Custodian’s form does not include the time period within which the public agency is required to make the record available pursuant to OPRA, a statement of the right to

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<sup>8</sup> See attached.

challenge a decision and the procedure for filing an appeal or a space for the Custodian to list the reasons for a denial. Therefore the Custodian has violated N.J.S.A. 47:1A-5.f in not adopting a statutorily compliant OPRA request form.

In Perino v. Township of Haddon Heights, GRC Case No. 2004-128 (November 2004) in which the Complainant questioned the compliance of the Custodian's OPRA request form the GRC found that pursuant to N.J.S.A. 47:1A-7.b. the GRC's role is limited to adjudicating issues surrounding denial of access to government records. Notwithstanding this fact, the Council has the authority to adjudicate the legal sufficiency of an agency's OPRA request form when the issue is linked to a denial of access complaint filed with the Council. See Paff v. Department of Labor, Board of Review, 379 N.J. Super. 346, 350 (App. Div. 2005), (recognizing the GRC's significant role in the administration of OPRA).

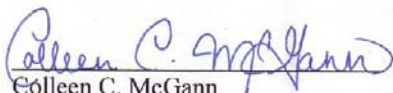
In light of the insufficiencies in the form adopted by the Custodian in this case the Council should find that the Custodian has violated N.J.S.A. 47:1A-5.f and should order the Custodian to amend its OPRA request form to ensure full compliance with OPRA.

### **Conclusions and Recommendations**

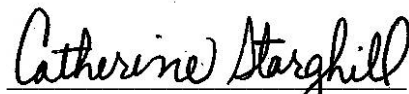
The Executive Director respectfully recommends that:

1. Based on the fact that the Custodian has not provided a lawful basis for denying access to the executive session minutes pursuant to N.J.S.A. 47:1A-6, the Custodian should disclose the requested December 1, 2003 and March 1, 2004 executive session minutes.
2. The Custodian has violated N.J.S.A. 47: 1A-5.g. in not providing a specific basis for the denial of access to the requested executive session minutes.
3. Based on N.J.S.A. 47:1A-5.f. and N.J.S.A. 47:1A-5.g. the Custodian acted properly in requiring the Complainant to complete the agency's adopted OPRA request form.
4. In light of the insufficiencies in the form adopted by the Custodian in this case the Council should find that the Custodian has violated N.J.S.A. 47:1A-5.f and should order the Custodian to amend their OPRA request form to ensure full compliance with OPRA.
5. The Custodian shall comply with "1." and "4." above within ten (10) business days from receipt of this Interim Order and simultaneously provide confirmation of compliance to the Executive Director.

Prepared By:

  
Colleen C. McGann  
Case Manager

Approved By:

  
Catherine Starghill, Esq.

Executive Director  
Government Records Council

April 7, 2006



**State of New Jersey**  
**GOVERNMENT RECORDS COUNCIL**

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COMMISSIONER SUSAN BASS LEVIN  
COMMISSIONER LUCILLE DAVY  
ROBIN BERG TABAKIN

**Interim Order**  
**April 11, 2006 Government Records Council Meeting**

John Paff  
Complainant

Complaint No. 2005-123

v.

Township of Old Bridge  
Custodian of Record

At the April 11, 2006 public meeting, the Government Records Council (“Council”) considered the April 7, 2006 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations with an amendment to “1.” of the “Conclusions and Recommendations.” The Council, therefore, finds that:

1. Based on the fact that the Custodian has not provided a lawful basis for denying access to the executive session minutes pursuant to N.J.S.A. 47:1A-6, the Custodian shall disclose the requested December 1, 2003 and March 1, 2004 executive session minutes with appropriate redactions pursuant to the Open Public Records Act (“OPRA”), providing a detailed and lawful basis for each redaction.
2. The Custodian violated N.J.S.A. 47: 1A-5.g. in not providing a specific basis for the denial of access to the requested executive session minutes.
3. Based on N.J.S.A. 47:1A-5.f. and N.J.S.A. 47:1A-5.g. the Custodian acted properly in requiring the Complainant to complete the agency’s adopted OPRA request form.
4. In light of the insufficiencies in the form adopted by the Custodian in this case the Custodian violated N.J.S.A. 47:1A-5.f and the Custodian shall amend their OPRA request form to ensure full compliance with OPRA.
5. The Custodian shall comply with "1." and “4.” above within ten (10) business days from receipt of this Interim Order and simultaneously provide confirmation of compliance to the Executive Director.



Interim Order Rendered by the  
Government Records Council  
On The 11<sup>th</sup> Day of April, 2006

A handwritten signature in black ink, appearing to read "Vincent P. Maltese", is written over a light gray rectangular background.

Vincent P. Maltese, Chairman  
Government Records Council

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

A handwritten signature in black ink, appearing to read "Robin Berg Tabakin", is written in a cursive style.

Robin Berg Tabakin, Secretary  
Government Records Council

**Decision Distribution Date: April 13, 2006**