

# John Paff

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Frank F. Caruso, Case Manager  
Government Records Council

(via email only to FCaruso@dca.state.nj.us)

RE: Paff v. Berkeley Heights  
GRC Case No. 2007-271

Dear Mr. Caruso:

I have a question about the following statement, with emphasis supplied, which is taken from Page 13 of the Findings and Recommendations in the captioned case.

*The Custodian's Counsel averred in the SOI that all existing records relating to police disciplinary matters were in the possession of the Police Department. N.J.S.A. 47:1A-5.h. states that an officer or employee of a public agency must either forward the request or direct the requestor to the custodian of record. In her initial response to the Complainant on October 5, 2007, the Custodian did not direct the Complainant to the Police Department even though the Township of Berkeley Heights Police Department's website, www.bhpolice.org, identifies Captain Andrew F. Moran, Detective Sergeant Stephen G. Stamler and Barbara Healy as the Berkeley Heights Police Department Custodians of Record and provides a downloadable version of the Police Department's official OPRA request form. Following the Complainant's inquiry as to the meaning of the Custodian's response to the Complainant's OPRA request, the Custodian merely stated that the Complainant should contact the Police Chief for a proper denial of access.*

*Therefore, because the Custodian had a duty to forward the Complainant's request for Items No. 3, No. 4 and No. 5 to the proper custodian of record or direct the Complainant to the proper custodian of record and failed to do so, the Custodian has violated N.J.S.A. 47:1A-5.h.*

If I understand the above statement correctly, OPRA permits municipalities to designate a separate custodian for its police records (and presumably for other categories of records as well) and require citizens who request police records to

submit their requests to those designated custodians. After such a designation is made, all the municipal clerk who receives an OPRA request for a police record needs to do to comply with OPRA is to direct the requestor to the designated custodian.

In Neff v. Department of Law and Public Safety, GRC Case No. 2005-101, the Council allowed a *state agency* to require requests to be submitted to the specific custodians designated for the agency's various internal divisions. But, until today, I was not aware of any Council ruling or other authority that allows *municipal agencies* to do likewise.

Until today, I have been operating under the belief that a municipal clerk, who OPRA specifically designates<sup>1</sup> as a the custodian of a municipality's records, was ultimately responsible for handling the request. In other words, I thought that all a citizen needs do to is submit a request to the municipal clerk, and that it becomes that clerk's duty to retrieve the requested records from the municipal officers who physically possess them. The Berkeley Heights Findings and Recommendations, however, apparently relieves municipal clerks from that duty and allows them to direct requestors to other officials that the municipality has designated.

Is Berkeley Heights the first time that the Council has addressed the issue of whether a municipality can designate someone other than the municipal clerk as the custodian for subset of the municipality's records? If not, would you please provide me the citations to the prior cases?

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Paff', with a large, stylized flourish above the name.

John Paff

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<sup>1</sup> N.J.S.A. 47:1A-1.1 states: "Custodian of a government record' or 'custodian' means in the case of a municipality, the municipal clerk and in the case of any other public agency, the officer officially designated by formal action of that agency's director or governing body, as the case may be."



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November 24, 2008

**VIA E-MAIL**

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

Re: John Paff v. Township of Berkeley Heights (Union),  
GRC Complaint No. 2007-271

Dear Mr. Paff,

Thank you for your inquiry regarding the above mentioned complaint.

As you pointed out in your initial correspondence, some municipalities and state agencies may designate more than one (1) custodian of record for processing requests pursuant to the Open Public Records Act ("OPRA") by division or department. For example, a board of education may designate the business administrator as the custodian of record. See Quirk v. Nutley Board of Education (Essex), GRC Complaint No. 2007-187 (October 2007) and Z.T. v. Bernards Township Board of Education (Somerset), GRC Complaint No. 2007-262 (June 2008).

As you are aware, OPRA defines a "custodian" as:

"...in the case of a municipality, the municipal clerk and in the case of any other public agency, the officer officially designated by formal action of that agency's director or governing body, as the case may be." N.J.S.A. 47:1A-1.1.

However, a certain number of municipalities have chosen to designate additional custodians of records for specific departments within their governmental structure, such as police departments, boards of education, etc., in order to facilitate public access to the records of those departments. Where applicable and appropriate, and where the evidence of record supports such a determination, the Government Records Council has exercised its discretion to recognize such custodians when they are specifically and clearly identified, in order to make it easier for requestors to seek and obtain government records in an expeditious manner consistent with OPRA. See, e.g., L.D. v. Bayonne Police Department, GRC Complaint No. 2004-64 (August 2004); Barron v. Highland Park Police Department, GRC Complaint No. 2004-145 (January 2005); Serrano v. New

Brunswick Police Department, GRC Complaint No. 2004-151 (April 2005); Quirk v. Nutley Board of Education (Essex), supra; Morris v. Trenton Police Department, GRC Complaint No. 2007-160 (May 2008); Z.T. v. Bernards Township Board of Education (Somerset), supra.

In the instant matter, the Berkeley Heights Police Department website provides an official OPRA request form and the names of three (3) officers designated as custodians of record. Therefore, based upon the evidence of record, the Council held that the request should have been forwarded to the designated records custodian of the Berkeley Heights Police Department based on the evidence of record in accordance with N.J.S.A. 47:1A-5.h.

I hope that this information resolves your inquiry. Please contact me if I may be of further assistance.

Sincerely,



Frank F. Caruso

Case Manager

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