

## Item #12

On July 18, 2016, I received an OPRA request from the Libertarians for Transparent Government (Item 6). The lawsuit for which the Requestor is seeking documents, Carabetta v. Borough of Westwood, was handled for the Borough by the Bergen County Municipal Joint Insurance Fund (JIF). The Borough of Westwood does not consistently receive copies of settlements or related correspondence pertaining to a settlement.

On July 18<sup>th</sup>, I reviewed my Carabetta subject file. It does not contain the amended civil complaint, which is the first document requested. Nor do I have the settlement agreement, which is the second document requested. The requestor's third request is for documents pertaining to the settlement, none of which I have or would even know if they existed as the Borough of Westwood is not the agency creating these documents.

Had the records in question been 'made, maintained, or kept on file in the course of his or its official business' by the Borough Attorney, Risk Manager, or other agents that are private businesses and as such not directly OPRA-able, I would have obtained the documents for the Requestor.

Since the JIF is 'an officer, commission, agency, or authority of the State or of any political subdivision thereof', it is directly OPRA-able pursuant to NJSA 47:1A-1.1 (Attachment A). I confirmed that the JIF does indeed accept OPRA requests directly (Attachment B).

NJSA 47:1A-5h directs anyone receiving a request for access to a record to forward the request to the Custodian of the record OR direct the requestor to the Custodian of the record. (Attachment C)

The Request had included reference to Burnett v. County of Gloucester as justification for compelling the Custodian to seek out and retrieve responsive records from its insurer. Having no access to the court ruling and no way of knowing if the County utilized a JIF-type agency as its insurer or a private firm that was not subject to OPRA, I followed the statute.

On July 19<sup>th</sup>, I advised the Requestor that I was not the Direct Custodian of the records being sought and provide the Requestor with the email address where the records could be obtained, as per NJSA47:1A-5h.

While NJSA 47:1A-5h also gives the option to forward the request to the Direct Custodian and advise the Requestor that this has been done, I interpret that to apply within an agency. In other words, if the Tax Collector for the municipality is handed an OPRA request, she would relay it to the municipality's Custodian of Records, which is usually the Municipal Clerk.

If the municipal Custodian of Records receives a request for records that originate with another public agency, be it the State, County, or in this case the JIF, I believe it would

better serve the Requestor to be redirected to the Direct Custodian of the records in question. Otherwise the Municipal Clerk would be acting as an intermediary for the request, which might not give the actual Custodian sufficient time to reply, and cause confusion as to whom questions should be directed. Additionally, the Municipal Clerk would shoulder the responsibility for filling a request without knowing if all responsive documents were provided.

The GRC's "Frequently Asked Questions" (Attachment D), which is found on the GRC website under "OPRA for the Public", seems to support my conclusions that the JIF is a public agency (Question #10); that I am not their Custodian of Record since I have not been designated by them as such nor do I have custody or control of their records (Question #9); requests 'must be submitted to the public agency that maintains physical custody of the requested records' (Question #12), and the non-custodian officer or employee may direct the requestor to the agency's records custodian (Question #17).

I do not believe I violated OPRA, as the Requestor suggests in the Complaint.