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January 24, 2020

VIA opramachine.com and Regular Mail

Mr. Rory Moore
462 Chestnut Street
Nutley, New Jersey 07110

**Re: Township of Nutley
OPRA Request 619-19**

Dear Mr. Moore,

This firm serves as special counsel to the Township of Nutley (the "Township"). I am in receipt of your email correspondence dated January 21, 2020 seeking an "internal review" of the above referenced request for access to government records (the "OPRA Request") pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1, et seq. ("OPRA") and the Township's response thereto.

My review of the OPRA Request and the Township's response has revealed the following facts. The OPRA Request was sent via the opramachine.com website on December 4, 2019 at 5:49 P.M., and was received by the Township on December 5, 2019 during regular business hours. The request sought "all the educational credits the [sic] were awarded to all of the employees from Tom Evans office. . . I want all the documents for all employees under Tom Evans". The OPRA Request also listed an advertisement that appears to have been taken from the New Jersey League of Municipalities pertaining to an annual conference.

The Township responded by denying the OPRA Request on December 13, 2019, which response was within the seven (7) business day deadline required under N.J.S.A. 47:1A-5(i). The reasons given for the denial included the fact that, although

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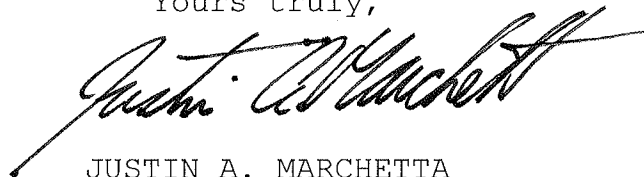
individual Township employees are responsible for maintaining their own licensure and continuing education credits, the Township does not maintain documents pertaining to continuing education credits in its files.

In response to your request for an "internal review," I have confirmed that the Township does not keep or maintain any such documents pertaining to continuing education credits earned by its employees. I also confirmed that the Township is not the custodian of records generated by the New Jersey League of Municipalities.

Pursuant to Michelson v. Wyatt, 379 N.J. Super. 611 (App. Div. 2005), if a public entity has not made, maintained, kept or received a document in the course of his or its official business, that document is not a government record subject to production under OPRA. Moreover, a custodian is not required to survey individual employees to glean information in response to an OPRA request. See N.J. Builders Ass'n v. N.J. Council on Affordable Housing, 390 N.J. Super. 166, 181-82 (App. Div. 2007). Because neither the OPRA statute nor the common law requires Township employees to turn over their individual private records in response to an OPRA request, the Township's denial of the OPRA Request was proper.

Based on the foregoing factual findings, the Township fully complied with its obligations under OPRA and the common law right of access. I trust that the forgoing has been fully responsive to your request for an internal review.

Yours truly,

A handwritten signature in black ink, appearing to read "Justin A. Marchetta", written over a horizontal line.

JUSTIN A. MARCHETTA

JAM/mg