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January 7, 2020

VIA opramachine.com and Regular Mail

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

**Re: Township of Nutley
OPRA Request 505-19**

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 December 30, 2019 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. Specifically, you inquire "[w]ill this request take much longer?"

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 September 23, 2019 at 4:57 P.M., and was received by the Township on September 24, 2019 during regular business hours. The request sought "all open lawsuits and all lawsuits closed within 12 months". The OPRA Request stated that it sought the "citations only".

The Township responded by denying the OPRA Request on September 27, 2019, which response was within the seven (7) business day deadline required under N.J.S.A. 47:1A-5(i). The

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reasons given for the denial included the fact that the Township does not keep a list of open or pending lawsuits filed against the Township. The Township also stated that is not required to compile or create such a list in response to the OPRA Request.

In response to your request for an "internal review," I have confirmed that the Township does not keep or maintain any such list of open lawsuits filed against the Township in the normal course of its business. I also note that pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005), agencies are required to disclose only "identifiable" governmental records not otherwise exempt; wholesale requests for general information, to be analyzed, collated, and compiled by the responding government entity, are not encompassed by OPRA.

Also, OPRA does not require Custodians to create documents in response to requests. See Gill v. Salem County, GRC Complaint No. 2005-185 (Feb. 17, 2006). Because the request for "all open lawsuits and all lawsuits closed within 12 months" would have required both research, and the creation of a document that is not currently in existence, 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", with a stylized flourish at the end.

JUSTIN A. MARCHETTA

JAM/mg