

## OAL FILING OF GRC COMPLAINT NO. #2006-102

### Appendix to Item #1

About the Transmitting Agency:

Government Records Council Complaint No. 2006-102, Michael Deluca v. Town of Guttenberg, is transmitted by the Government Records Council ("GRC"), an agency created pursuant to N.J.S.A. 47:1A-7.a. of the Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 et seq. The GRC is authorized to receive, hear, review and adjudicate complaints filed by any person concerning a denial of access to a government record pursuant to N.J.S.A. 47:1A-7.b.

This matter is transmitted to the Office of Administrative Law for a hearing pursuant to N.J.S.A. 47:1A-7.e. because there are certain facts and/or issues in the case that are in dispute and require more in depth proceedings. Specifically, the Council seeks a determination of:

Whether the Custodian has knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances based on the significant question of fact regarding whether or not the Custodian falsely certified that no records responsive to the Complainant's November 16, 2005 OPRA records request exist? **The GRC has concluded that it is possible that the Custodian's actions were intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional.**

**If the Custodian is found to have knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances, a civil penalty may be assessed in accordance with N.J.S.A. 47:1A-11.a. Additionally, appropriate disciplinary proceedings may be initiated against a custodian against whom a penalty has been imposed.**

The GRC has been advised by the Office of the Attorney General that because this civil penalty is personal to the Custodian, due process requires a fact-finding hearing before the penalty may be assessed. As such, the case is referred to the Office of Administrative Law for a fact-finding hearing.



**State of New Jersey**  
**GOVERNMENT RECORDS COUNCIL**  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

VINCENT P. MALTESE, Chairman  
ACTING COMMISSIONER CHARLES RICHMAN  
COMMISSIONER LUCILLE DAVY  
ROBIN BERG TABAKIN  
DAVID FLEISHER  
CATHERINE STARGHILL Esq., Executive Director

Toll Free: 866-850-0511  
Fax: 609-633-6337  
E-mail: [grc@dca.state.nj.us](mailto:grc@dca.state.nj.us)  
Web Address:  
[www.nj.gov/grc](http://www.nj.gov/grc)

July 26, 2007

William Speziale  
Deputy Clerk  
State of New Jersey  
Office of Administrative Law  
33 Washington Street, 7<sup>th</sup> Floor  
Newark, New Jersey 07102

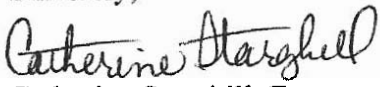
Re: NJ Government Records Council Complaint No. 2006-102

Dear William:

The enclosed case (Michael Deluca v. Town of Guttenberg, GRC Complaint No. 2006-102) is being transmitted to the Office of Administrative Law. We ask that you consider scheduling this case for a hearing as expeditiously as possible. Please process this case in accordance with your procedures.

If you have any questions regarding this matter, please contact me at your convenience. Thank you for your assistance in this matter.

Sincerely,

  
Catherine Starghill, Esq.  
Executive Director  
Government Records Council  
Phone: 609-292-6830  
Fax: 609-633-6337

Enclosures

cc: Michael Deluca  
Linda Martin  
Charles Daglian, Esq.

OFFICE OF ADMINISTRATIVE LAW

Agency Ref. No.: GRC COMPLAINT NO. 2006-102

33 Washington St  
Newark NJ 07102-3011

Transmitting Agency:  
GOVERNMENT RECORDS COUNCIL

Judge: Geraghty, James

\*\*\*\*\* Prehearing Conference

DELUCA, MICHAEL

Conference limited to  
attorneys of record,  
approved non-lawyer  
representatives

TOWN OF GUTTENBERG

\*\*\*\*\* and pro se petitioners

Nature of proceeding:

WHETHER THE RECORDS CUSTODIAN KNOWINGLY AND WILLFULLY  
VIOLATED THE OPEN PUBLIC RECORDS ACT AND UNREASONABLY DENIED  
ACCESS TO GOVERNMENT RECORDS. ET AL. NJSA 47:1A-11

A telephone prehearing conference in this case will be held on:  
Sep 18, 2007 04:30 PM

Parties who do not have an attorney should immediately contact this office at the above number to supply a telephone number where they can be reached at the date and time listed above. Attorneys will be telephoned at their offices. Parties must be familiar with the case and be fully prepared to discuss the following:

1. The issue or issues to be resolved including special evidence problems.
2. The parties, their status and their attorneys or other representatives, including the name of the particular attorney who will try the case.
3. Any special notice requirements.
4. The date, time and place for hearing. Parties should be prepared to discuss one or more alternate hearing dates.
5. Stipulations as to facts and issues.
6. Settlement.
7. Any amendments to the pleadings contemplated or granted.
8. Discovery matters remaining to be completed, the date when discovery shall be completed and the type of discovery to be used.
9. The order of proofs.
10. A list of exhibits marked for identification.
11. A list of exhibits marked for evidence by consent.
12. Estimated number of fact and expert witnesses.
13. Any motions contemplated, pending and granted.
14. Other special matters.

Parties should have already begun discovery. The rules for the conference are set forth fully at N.J.A.C. 1:1-13.1 et seq.

AUG 23 2007

Date  
(DAL:P1)

William G. Speziale  
Deputy Clerk