

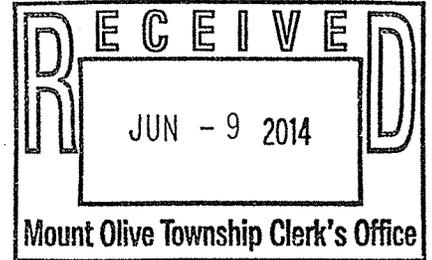


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done
relatively cc: B/dg.
Jef

Date: JUN 06 2014

Rich Rodack
ExxonMobil Environmental Services Co.
600 Billingsport Road, Room 8-233
Paulsboro NJ 08066



Re: Response Action Outcome

Remedial Action Type: Unrestricted Use

Scope of Remediation: Area of Concern: AOC-1: One 12,000-gallon unleaded gasoline (E1) Underground Storage Tank (UST) and two 10,000-gallon unleaded gasoline (E2 & E3) USTs removed in October 2013, associated appurtenances, and no other areas

Case Name: Former Exxon #38994 Hackettstown

Address: 150 Route 46 & Naughtright Road; also referred to as 401 Route 46

Municipality: Mount Olive Township

County: Morris

Block: 8100 **Lot:** 37

Preferred ID: 016929

UST Number: 0169293

TMS Number: N13-9228

Communication Center: 13-10-21-1550-30

Well Permit: P200904837 (MW-1), P200904838 (MW-2), P200904839 (MW-3), P200904840 (MW-4), P200904841 (MW-5), and P200904842 (MW-6)

Dear Mr. Rodack:

As a Licensed Site Remediation Professional authorized pursuant to N.J.S.A. 58:10C to conduct business in New Jersey, I hereby issue this Response Action Outcome for the remediation of the area of concern specifically referenced above. I personally reviewed and accepted all of the referenced remediation and based upon this work, it is my professional opinion that this remediation has been completed in compliance with the Administrative Requirements for the Remediation of Contaminated Sites (N.J.A.C. 7:26C), that is protective of public health, safety and the environment. Also, full payment has been made for all Department fees and oversight costs pursuant to N.J.A.C. 7:26C-4.

This remediation includes the completion of a Site Investigation and Remedial Action as defined pursuant to the Technical Requirements for Site Remediation (N.J.A.C. 7:26E),

My decision in this matter is made upon the exercise of reasonable care and diligence and by applying the knowledge and skill ordinarily exercised by licensed site remediation professionals in good standing practicing in the State at the time these professional services are performed.

As required pursuant to N.J.A.C. 7:26C-6.2(b)2ii, a copy of all records related to the remediation that occurred at this location is being simultaneously filed with the New Jersey Department of Environmental Protection (Department). These records contain all information upon which I based my decision to issue this Response Action Outcome.

By operation of law a Covenant Not to Sue pursuant to N.J.S.A. 58:10B -13.2 applies to this remediation. The Covenant Not to Sue is subject to any conditions and limitations contained herein. The Covenant Not to Sue remains effective only as long as the real property referenced above continues to meet the conditions of this Response Action Outcome.

CONDITIONS

Pursuant to N.J.S.A. 58:10B-12o, ExxonMobil Environmental Services Company and any other person who is liable for the cleanup and removal costs, and remains liable pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. shall inform the Department in writing, on a form available from the Department, within 14 calendar days after its name or address changes. Any notices you submit pursuant to this paragraph shall reference the above case numbers and shall be sent to:

New Jersey Department of Environmental Protection
Bureau of Case Assignment and Initial Notice
Mail Code 401-05H
401 East State Street, 5th floor
PO Box 420
Trenton, New Jersey 08625-0420

NOTICES

Well Decommissioning

Pursuant to N.J.A.C. 7:9D-3, all wells installed as part of this remediation have been properly decommissioned by a New Jersey licensed well driller of the proper class in accordance with the procedures set forth in N.J.A.C. 7:9D and the well driller's well decommissioning report has been submitted to the Bureau of Water Allocation and Well Permitting.

Building Interiors Not Addressed (Non-Child Care)

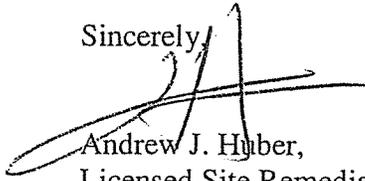
Please be advised that the remediation that is covered by this Response Action Outcome does not address the remediation of hazardous substances that may exist in building interiors or equipment, including, but not limited to, radon, asbestos and lead. As a result, any risks to human health presented by any building interior or equipment remains. A complete building interior evaluation should be completed before any change in use or re-occupancy is considered.

In concluding that this remediation has been completed, I am offering no opinions concerning whether either primary restoration (restoring natural resources to their pre-discharge condition) or compensatory restoration (compensating the citizens of New Jersey for the lost interim value of the natural resources) has been completed.

Pursuant to N.J.S.A. 58:10C-25, the Department may audit this Response Action Outcome and associated documentation up to three years following issuance. Based on a finding by the Department that a Response Action Outcome is not protective of public health, safety and the environment, the Department can invalidate the Response Action Outcome. Other justifications for the Department's invalidation of this Response Action Outcome are listed in the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-6, including, but not limited to, a Department audit following issuance of this document may be initiated at any time if: a) undiscovered contamination is found that was not addressed by the Response Action Outcome, b) if the Licensed Site Remediation Professional Board conducts an investigation of the Licensed Site Remediation Professional issuing the Response Action Outcome or, c) if the license of that person is suspended or revoked.

Thank you for your attention to these matters. If you have any questions, please contact me at (609) 584-5271.

Sincerely,



Andrew J. Huber,

Licensed Site Remediation Professional #578142

c:

Mr. Carlos Perez, Jr., Health Officer, Morris County Office of Health Management, 1 Hall of Records, Court Street - PO Box 900, Morristown, NJ 07963-0900

Mayor Robert Greenbaum, Mayor - Mount Olive Township, PO Box 450, Budd Lake, N.J. 07828

Mr. Marc D. Dashield, Mount Olive Township, PO Box 450, Budd Lake, N.J. 07828

Ms. Lisa Lashway, Mount Olive Township Clerk, PO Box 450, Budd Lake, N.J. 07828

Mr. Frank Wilpert Sr., Health Officer, Mount Olive Township, PO Box 450, Budd Lake, N.J. 07828

NJDEP Bureau of Case Assignment and Initial Notice. Site Remediation Program, 401-05H, PO Box 420, Trenton, NJ 08625-0420

Mr. George Boyadzhyan, G&J of NEW JERSEY INC., 150 Route 46 & Naughtright Road, Hackettstown, New Jersey 07840



**New Jersey Department of Environmental Protection
Site Remediation Program**

RESPONSE ACTION OUTCOME FORM

Date Stamp
(For Department use only)

SECTION A. SITE NAME AND LOCATION

Site Name: Former Exxon #38994 Hackettstown

List All AKAs: G & J of New Jersey Inc.

Street Address: 150 US Route 46 & Naughtright Road; also referred to as 401 Route 46

Municipality: Mount Olive Twp. (Township, Borough or City)

County: Morris Zip Code: 07840

Program Interest (PI) Number(s): 016929 Case Tracking Number(s): 13-10-21-1550-30/N13-9228

Date Remediation Initiated Pursuant to N.J.A.C. 7:26C-2: 10/21/2013

State Plane Coordinates for a central location at the site: Easting: 414073 Northing: 735642

Municipal Block(s) and Lot(s):

Block #: <u>8100</u>	Lot #: <u>37</u>	Block #: _____	Lot #: _____
Block #: _____	Lot #: _____	Block #: _____	Lot #: _____
Block #: _____	Lot #: _____	Block #: _____	Lot #: _____
Block #: _____	Lot #: _____	Block #: _____	Lot #: _____

SECTION B. SUBMITTAL STATUS

	Not Applicable	Included in This Submission	Previously Submitted	Date of Submission	Date of Revised Submission	Date of Document Withdrawal
Public Notification Form	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
Immediate Environmental Concern Report	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
IEC Engineered System Response Action Report	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
Vapor Concern Mitigation Report	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
LNAPL Interim Remedial Measure Report	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
Preliminary Assessment Report	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
Receptor Evaluation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
Site Investigation Report	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
Remedial Investigation/Remedial Action Work Plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
Remedial Action Report	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
Response Action Outcome	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
Alternative Soil Remediation Standard and/or Screening level Application Form	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
Case Inventory Document	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
Technical Impracticability Determination	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
Permit Application – list:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
Radionuclide Remedial Investigation Workplan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
Radionuclide Remedial Investigation Report	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
Radionuclide Remedial Action Workplan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
Radionuclide Remedial Action Report	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			

SECTION C. SITE USE

Current Site Use (check all that apply)

- Industrial
- Residential
- Commercial
- School/Childcare
- Other: _____
- Agricultural
- Park or recreational use
- Vacant
- Government

Intended Future Use (check all that apply)

- Industrial
- Residential
- Commercial
- School/Childcare
- Park or recreational use
- Vacant
- Government
- Future site use unknown

SECTION D. CASE TYPE: (check all that apply)

- Administrative Consent Order (ACO)
- Brownfield Development Area (BDA)
- Child Care Facility
- Chrome Site (Chromate chemical production waste)
- Coal Gas
- Due Diligence with RAO
- Hazardous Discharge Remediation Fund (HDSRF) Grant/Loan
- ISRA
- Landfill (SRP subject only)
- Regulated Underground Storage Tank (UST)
- Remediation Agreement (RA)
- School Development Authority (SDA)
- School facility
- Spill Act Defense – Government Entity
- Spill Act Discharge
- UST Grant/Loan

Federal Case (check all that apply)

- RCRA GPRA 2020
- CERCLA/NPL
- USDOD
- USDOE
- TSCA
- Other (explain): _____

SECTION E. PUBLIC FUNDS

- Did the remediation utilize public funds? Yes No
- If "Yes," check applicable:
- UST Grant
 - HDSRF Grant
 - Spill Fund
 - UST Loan
 - HDSRF Loan
 - Schools Development Authority
 - Brownfield Reimbursement Program
 - Landfill Reimbursement Program

SECTION F. SCOPE OF THE RESPONSE ACTION OUTCOME

1. Check only 1 box
 - Area(s) of Concern Only
 - Entire Site
 - Entire Site – Child Care Center Facility License
 - Lease Hold Portion Only – Child Care Center Facility (Refer to RAO Guidance Document for license details)
 - ISRA Subject Industrial Establishment (leasehold portion only)
2. Total number of contaminated AOCs associated with the site: 1
3. Total number of contaminated AOCs addressed in this submittal: 1
4. Are there any outstanding contaminated AOCs associated with the case where an RAO has not been filed? Yes No

SECTION G. FEES

- All Oversight Invoices and Annual Remediation Fees are Paid in Full.
- Attach a copy of the Financial Obligation Report

SECTION H. EXTENT OF REMEDIATION COVERED BY THE RESPONSE ACTION OUTCOME (check only 1 box)

- Unrestricted RAO
- Limited Restricted RAO
- Restricted RAO

SECTION I. RESPONSE ACTION OUTCOME PREPARATION CHECKS

1. Was the RAO issued only to the "Person(s) that conducted the Remediation"? Yes No
2. Does the language in the issued RAO document conform to the RAO shell document?..... Yes No
3. Were all the applicable individuals/agencies noted in the shell document copied on the RAO?.. Yes No
4. Are there electronic copies of all remediation related records included with this submittal?..... Yes No
5. Have all NJDEP fees and outstanding oversight costs been paid? Yes No
6. Have any identified deficiencies been addressed in this or prior submittal?..... Yes No N/A
7. Did the remedial action render the property unusable for future redevelopment or recreation use?..... Yes No

SECTION J. APPLICABLE REMEDIATION STANDARDS

1. Were Default Remediation Standards used for all contaminants? Yes No
 (If "Yes," check all that apply)
 Direct Contact
 Impact to Ground Water Soil Screening Levels
 Ecological Screening Levels

2. Has compliance averaging been utilized to determine compliance with the Inhalation Pathway? Yes No
 If "Yes," check all that apply:

Compliance Averaging Method Utilized

Pathway	Arithmetic Mean	95 Percent UCL	Spatially Weighted Average	75 Percent/ 10X Procedure
<input type="checkbox"/> Ingestion-Dermal Pathway	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Inhalation Pathway	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Impact to Ground Water Pathway	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3. Has a compliance option been utilized to determine compliance with the Impact to Ground Water Pathway? (If "Yes," check all that apply) Yes No
 Immobile Compounds
 Data evaluation for metals and semi-volatiles
 Data evaluation for volatile organics derived from discharges of petroleum mixtures

4. Were Alternate Remediation Standards used for the Ingestion/Dermal Pathway? Yes No

5. Were Alternate Remediation Standards used for the Inhalation Pathway?..... Yes No

6. Were Site Specific Standards used for the Impact to Ground Water Pathway? Yes No
 (If "Yes," check all that apply)

- Soil-Water Partitioning Equation SPLP Sesoil Sesoil/AT123D
- DAF Modification Immobile Chemicals List
- Soil and Ground Water Analytical Data Evaluation

7. Were Site Specific Ecological Remediation Goals used?..... Yes No

8. What is the ground water classification for this site as per N.J.A.C. 7:9C? (check all that apply)

- Class I-A Class II-A
- Class I-PL Pinelands Protection Area Class III-A
- Class I-PL Pinelands Preservation Area Class III-B

SECTION K. MEDIA IMPACTED/REMEDIATED

1. Soil Remediation Types (check all that apply):

- No remedial action required Excavation
- Capping / other engineering controls Treatment
- Institutional Control Other _____

2. Ground Water

Have the Ground Water Quality Standards been met? Yes No

Do groundwater concentrations remain above the Ground Water Quality Standards but concentrations are low and non-decreasing? Yes No N/A

3. Ground Water Remediation Types (check all that apply):

- No remedial action required
- In-Situ
- Monitored Natural Attenuation
- Physical Containment
- Hydraulic Control
- Other _____
- Pump & Treat
- Institutional Control

4. Ecological

Was wetlands mitigation/restoration required? Yes No

Was a wetlands mitigation/restoration plan approved by NJDEP? Yes No

Do contaminant levels currently meet ecological screening levels or Site Specific Ecological Remediation Goals?

Surface water Yes No N/A

Sediment Yes No N/A

5. Wetland Remediation Types (check all that apply):

- No remedial action required
- Excavation
- Capping
- Other _____

6. Sediment Remediation Types (check all that apply):

- No remedial action required
- Excavation
- Capping
- Other _____

7. General

Has radionuclide contamination been addressed in any media? Yes No N/A

SECTION L. ALTERNATIVE STANDARD / VARIANCES

Alternative remediation standard / screening level

If proposing an alternative remediation standard pursuant to N.J.A.C. 7:26D-7.4, alternate vapor intrusion screening level, or ecological site specific goal check here and attach the Alternative Soil Remediation Standard and/or Screening Level Application Form as an addendum.

A site-specific screening level was developed for the evaluation of the VI pathway Yes No

Variance from regulations

If the Licensed Site Remediation Professional has varied from the Technical Rules, provide the citation(s) from which the remediation varied and the page(s) in the attached document where the rationale for the variance is provided.

N.J.A.C. 7:26E- 1.6 (a) 5.ii _____ Page 6 _____

N.J.A.C. 7:26E- 1.6 (b) 8.ii _____ Page 6 _____

N.J.A.C. 7:26E- _____ Page _____

SECTION M. RESPONSE ACTION OUTCOME NOTICES (check all the apply and were used in the RAO document)

1. General Notices

- Well Decommissioning
- Building Interiors Not Addressed

2. Child Care Center Notices

- Child Care Center Notices (Use this notice in all Child Care Center RAOs)
- Child Care Center Specific-Multi-Tenant Situations

3. Contamination Remaining Onsite

- Regional Natural Background Levels of Contamination
- Existing CEA or Deed Notice
- Soils Only RAO
- Ground Water Contamination Not Yet investigated
- Ground Water Contamination Due to Regional Historic Fill
- Contamination Remaining Onsite Due to Migration from Off-site Source
- Known Onsite Contamination Source Not Yet Remediated
- Less than an Order of Magnitude Remediation Standard Change For A Site With An Approved RAW Prior To A New Remediation Standard
- Less than an Order of Magnitude Remediation Standard Change For A Site With A Final Remediation Document Prior to A New Remediation Standard

4. ISRA Specific Notices

- ISRA Specific - RCRA Situations
- ISRA Specific - Multi-Tenant Situations
- ISRA Specific - Landfill Situations

SECTION N. REMEDIATION FUNDING SOURCE

1. Has a Remediation Funding Source been posted for this site pursuant to N.J.A.C. 7:26C-5?.... Yes No

If "Yes, check a. or b. below as applicable:

- a. This RAO is for the entire site and serves as notice to the NJDEP to return the Remediation Funding Source posted for this site*.
- b. This RAO is for an Area of Concern only and (check one below):
 - Serves as notice to the NJDEP to decrease the Remediation Funding Source posted for this site*.
 - No adjustments to the Remediation Funding Source are requested at this time.

Note: If any box in a. or b. above identified with an asterisk (*) is checked, be sure to include the completed "Remediation Cost Review and RFS-FA Form" available at <http://nj.gov/dep/srp/srra/forms>

SECTION O. PERSON RESPONSIBLE FOR CONDUCTING THE REMEDIATION INFORMATION AND CERTIFICATION

Full Legal Name of the Person Responsible for Conducting the Remediation: ExxonMobil Environmental Services Co.

Representative First Name: Richard Representative Last Name: Rodack

Title: Team Lead - NJ

Phone Number: (856) 224-2340 Ext: _____ Fax: (856) 224-3627

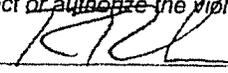
Mailing Address: 600 Billingsport Road, Room 8-233

City/Town: Paulsboro State: NJ Zip Code: 08066

Email Address: rich.rodack@exxonmobil.com

This certification shall be signed by the person responsible for conducting the remediation who is submitting this notification in accordance with Administrative Requirements for the Remediation of Contaminated Sites rule at N.J.A.C. 7:26C-1.5(a).

I certify under penalty of law that I have personally examined and am familiar with the information submitted herein, including all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, to the best of my knowledge, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement which I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of any statute, I am personally liable for the penalties.

Signature: 

Date: 5/23/14

Name/Title: Richard Rodack / Team Lead - NJ

Company Name: ExxonMobil Environmental Services Co.

No changes to contact information since last submittal

SECTION P. LICENSED SITE REMEDIATION PROFESSIONAL INFORMATION AND STATEMENT

LSRP ID Number: 578142

First Name: Andrew

Last Name: Huber

Phone Number: (609) 584-5271

Ext: 344

Fax: (609) 584-7498

Mailing Address: 3 AAA Drive

City/Town: Hamilton

State: NJ

Zip Code: 08691

Email Address: ahuber@kleinfelder.com

This statement shall be signed by the LSRP who is submitting this notification in accordance with SRRA Section 16 d. and Section 30 b.2.

I certify that I am a Licensed Site Remediation Professional authorized pursuant to N.J.S.A. 58:10C to conduct business in New Jersey. As the Licensed Site Remediation Professional of record for this remediation, I:

[SELECT ONE OR BOTH OF THE FOLLOWING AS APPLICABLE]:

directly oversaw and supervised all of the referenced remediation, and/or

personally reviewed and accepted all of the referenced remediation presented herein.

I believe that the information contained herein, and including all attached documents, is true, accurate and complete.

It is my independent professional judgment and opinion that the remediation conducted at this site, as reflected in this submission to the Department, conforms to, and is consistent with, the remediation requirements in N.J.S.A. 58:10C-14.

My conduct and decisions in this matter were made upon the exercise of reasonable care and diligence, and by applying the knowledge and skill ordinarily exercised by licensed site remediation professionals practicing in good standing, in accordance with N.J.S.A. 58:10C-16, in the State of New Jersey at the time I performed these professional services.

I am aware pursuant to N.J.S.A. 58:10C-17 that for purposely, knowingly or recklessly submitting false statement, representation or certification in any document or information submitted to the board or Department, etc., that there are significant civil, administrative and criminal penalties, including license revocation or suspension, fines and being punished by imprisonment for conviction of a crime of the third degree.

LSRP Signature: _____

Date: 6/3/14

LSRP Name/Title: Andrew J. Huber / Project Manager & LSRP

Company Name: Kleinfelder, Inc.

No changes to contact information since last submittal

Completed forms should be sent to:

Bureau of Case Assignment & Initial Notice
Site Remediation Program
NJ Department of Environmental Protection
401-05H
PO Box 420
Trenton, NJ 08625-0420

Make Sure You Know When You Can't Redact

by Richard Lustgarten, MCANJ Legal Counsel



In the ongoing evolution of OPRA, a case was decided this Spring which again confirms the public's Right to Know and clearly reasserts the obligation of the custodian of records to comply with OPRA's mandate. While some commentators felt that this case was one of 'first impression', I did not.

The name of the case is *ACLU of New Jersey v NJ Division of Criminal Justice et al*, decided May 13, 2014. The question presented was whether under OPRA or the Common Law Right of Access, a government agency has the authority to redact an admittedly responsive document to withhold information the agency deems to be outside the scope of the request. If you are of the opinion that the agency can redact portions of documents in response to the request, you would be in agreement with the trial court. Unfortunately, that would be an incorrect conclusion, as the Trial Court was reversed by the Appellate Division and it is my opinion that the Appellate Court got it right and the Trial Court was incorrect.

Effectively, the Trial Court determined that the agency had the authority to withhold information that it believed fell outside the scope of the request without first seeking consent or clarification of the requestor. The second question presented was that if the answer to the first question is 'yes', is it reasonable to impose the burden on the requestor to clarify the request? At the trial level the Court answered both questions in the affirmative. The Trial Court also acknowledged that the documents requested were 'public records' which were unambiguously available to the public both under OPRA and the Common Law Right of Access. The Trial Judge felt that the action taken by the custodian constituted a reasonable good faith determination by the agency that the redacted documents fell outside scope of the request. The Trial court also felt that if the requestor was dissatisfied with the agency's response, it was not unreasonable to ask the requestor to make a follow-up request for additional information.

The Appellate Division did not agree with the Trial Court's reasoning on the simple grounds that the redaction protocol adopted by the Department of Criminal Justice was not grounded in any of the statutorily recognized exemptions in OPRA or on any claim of confidentiality under the Common Law Right of Access.

The Appellate Division cited older precedent, stated simply, that absent a legally recognized exception to disclosure, a citizen's right of access to public information is unfettered. To adopt the Trial Court's reasoning, the agency would have the unilateral authority to make a determination as to what is relevant to the specific request. The Appellate Division stated that this approach confers upon the custodian of government records quasi-judicial power to determine what information contained within a 'government record' is relevant to a request and therefore subject to disclosure. Conversely, the custodian would have the authority to determine what should be held and what should be withheld from the public based solely on the custodian's notion of relevance.

The Appellate Division clearly and firmly stated that there is no legal support for such reasoning under the policies of OPRA, or the Common Law.

The Court also indicated rather strongly that the "onus" should not be placed on the requestor to clarify or engage in negotiations with the custodian when the documents are clearly within the scope of OPRA or the Common Law Right of Access.

While on the surface, the Trial Court's approach might seem reasonable, it actually places a greater burden on the custodian of records to be correct in determining the issue of relevancy and it also shifted the burden to the requestor to make a follow-up request which runs counter to the public policy favoring the prompt disclosure of government records.

The Court stated in its conclusion that when the request covers "government records," a government agency's policy to restrict the public's right of access to those records under OPRA must be supported by one or more of the twenty-one (21) categories of information recognized as an exception or by establishing under the Common Law, using a balancing test previously established, that the public's interest for confidentiality outweighs the private right of access. The Court concluded rather resoundingly that "absent establishing such a showing, a citizen's right of access is unfettered."

This case will actually aid you in responding to government records or in response to a Common Law request. You will not have to exercise discretion as to the scope of the request, and perhaps be concerned about being 'second-guessed' after the fact. If what is requested is a government record, and it doesn't fall within the exceptions, and it doesn't fall against the requestor in the Common Law balancing test, supply the documents and you will have complied with your statutory duty.